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Editors' Note

R. MATEFI[1] A. ORIOLO[2]

This Issue hosts the Proceedings of the International Conference "Advancing Human Dignity: International and EU Legal Pathways to Justice, Inclusion and Non-Discrimination", held in hybrid format on 21 November 2025. The Conference was jointly organised by the Faculty of Law of Transilvania University of Brașov (Romania) and the Department of Legal Sciences (School of Law) of the University of Salerno (Italy).

The event took place within the framework of the International and European Criminal Law Observatory (IECLO) and marked the inauguration of the 3rd Edition of the Jean Monnet Module EU-GLOBACT "Transnational Crime and EU Law: towards Global Action against Cross-border Threats to common security, rule of law and human rights" (Project number 101126599 - funded by European Commission Erasmus + Programme – Jean Monnet Action. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them).

The Conference addressed the protection and promotion of human dignity, which remain fundamental priorities within both international law and European Union legal systems. It examined how legal frameworks, institutional practices, and judicial developments at European and global levels can be mobilised to advance justice, foster inclusion, and combat discrimination in all its forms.

By bringing together diverse scholarly and professional perspectives, the event aimed to stimulate critical dialogue on how law and policy can more effectively safeguard the inherent dignity of every individual. The one-day Conference brought together national, European, and international academics and experts for an interdisciplinary exchange on both the potential and the limitations of existing legal frameworks. The Proceedings largely mirror the structure of the Conference and are organised into six sections.

The first section focuses on Advancing Human Dignity under International Law and includes contributions on biomedicine (Duminică), starvation in armed conflicts (Cifra), migration and human rights violations (Mussi), discriminatory neutrality and coercive inclusion (Oriolo), the principle of humanity in modern warfare (Staiano), sustainable development (Pagano), climate justice and the rights of future generations (Popa Tache), and the new Convention for the protection of the legal profession (Savu E.C.).

The second section addresses Advancing Human Dignity under EU Law, examining topics such as the due diligence principle (Bularca and Nicolaie), end-of-life issues (Busillo), the EU's green transition (Byamugisha), access to justice (Cozgarea), the right to welfare (Mauri), corporate sustainability (Mercier), human dignity as a principle of interpretation in EU law (Neagoe), and the use of empirical data in justice systems (Solis and Basystiuk).

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The third section explores Advancing Human Dignity under Criminal Law, with contributions on domestic violence (Bârsan and Gorgovan), protection against discrimination (Coman), environmental criminal justice (Di Donato), enforcement law (Ghihaia), the criminal-legal relationship (Ghigheci), gender discrimination in the case law and policies of the International Criminal Court (Foccillo), hate crime laws (Najandimanesh), and the persecution of Roma communities from Nuremberg to the present (Surlovska Ristevska).

The fourth section is devoted to Advancing Human Dignity in the Digital Era. It includes analyses of dignity at work in relation to personal data protection (Anghel), post-mortem data protection (Conti), accessibility and equality in digital public administration (Csatlos), algorithmic contracting in transport services (Gheoculescu), the discriminatory effects of AI on personality rights in employment (Matefi), non-discrimination in the digital age with reference to EU general principles (Nițoiu) and the broader EU legal framework (Pisapia), criminal liability in the age of artificial intelligence (Schultz), and EU values in the implementation of AI systems (Vâlcu).

The fifth section examines Public Law Pathways to Human Dignity, covering issues such as the discriminatory effects of certain citizenship laws (Barbu and Cerbu), procedural pathways to human dignity (Bedic), public pensions as an expression of human dignity (Dinu C.G.), Kosovo's pre-emptive implementation of international human rights instruments (Kullaj and Hajredini), defensive democracy (Nica), and the legal status of graves as sites of memory (Șchiopu).

The final section addresses Private Law Pathways to Human Dignity, with contributions on the sociological and legal dimensions of human dignity in labour relations (Boghirnea), disability, access to literary works and copyright (Dinu C.), unequal access to medical treatment (Hageanu), the regime of casual workers (Kolar Vasudeva), the civil liability of service providers (Iachim and Mădulărescu), inclusive justice (Spîrchez), and personality rights in the context of conflict of laws (Savu C.N.).

Collectively, these Proceedings constitute a dense and substantial dissemination output of an international symposium aimed at fostering shared research and the exchange of ideas in order to identify effective solutions and best practices for promoting human dignity that may be replicated across different legal systems, while also informing legislative development and policymaking grounded in principles of non-discrimination and inclusivity.

To this end, the Conference was open to the academic community, including students, doctoral candidates, and researchers, as well as legal practitioners, non-academic stakeholders, the general public, and young participants. It brought together more than fifty speakers from eleven countries.

This demanding collective endeavour would not have been possible without the support of the members of the Editorial Staff, the Scientific Board, and the Organising Committee (in particular, Silviu-Dorin Șchiopu, Francesco Foccillo, and Stefano Busillo) to whom we extend our sincere thanks.

February 05, 2026

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INTERNATIONAL LAW AND STARVATION IN ARMED CONFLICT: RETHINKING APPLICATION AND STRENGTHENING PROTECTION THROUGH A HUMAN DIGNITY PERSPECTIVE

Marco CIFRA[1]

Abstract: *This paper examines starvation in armed conflict, analysing its dual legal meaning: as an unlawful method of warfare under international humanitarian law (IHL) and as an unlawful consequence of acts of warfare under IHL and international human rights law (IHRL), specifically, concerning the right to food. The paper wants to demonstrate that the obligations under IHL and IHRL regarding starvation are complementary. By employing a systematic interpretation, the paper seeks to ensure legal coherence and to strengthen human dignity in armed conflicts.*

Key words: *starvation in armed conflicts; international humanitarian law; international human rights law; right to food; human dignity.*

1. Introduction

Food and armed conflict form a persistent relationship. Lack of food or food insecurity can be one of the causes of armed conflict, a method of warfare and a consequence of armed conflict (S/RES/2417 (2018)). Regarding consequences, lack of food may be a side effect, or an intended outcome created by political and military choices. Addressing the link between lack of food and armed conflict requires consideration of the concept of starvation.

At a meta-legal level, there are several issues in defining this term (Conley and de Waal, 2022, pp. 33-45). For our purpose, starvation is not only a factual element, but it is a legal concept that must be defined. The law is like King Midas: just as the king's touch turned everything into gold, so does the law's touch turn everything to acquire a legal recognition. The legal meaning of starvation under international law can be deduced from international humanitarian law (IHL) and international criminal law (ICL). According to IHL, starvation is, first and foremost, an unlawful method of warfare (Article 54(1) of

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the Additional Protocol I to the Four Geneva Conventions of 1949, hereinafter API) and a method of combat (Article 14 of the Additional Protocol II to the Four Geneva Convention of 1949, hereinafter APII). According to ICL, it is a war crime (Art. 8(b)(xxv) of the Statute of International Criminal Court). In both cases, starvation is established when the perpetrator (the State in the first case and the natural person in the latter) has the following conduct: depriving the civilians (defined by Article 50 of the Additional Protocol I) of objects indispensable for survival (OIS). In addition to the material element, the perpetrator must support this conduct with the psychological element, which in the first case, is "[…] the specific purpose of denying […]" OIS to civilians (Article 54(2) of the API) and in the second case "intent and knowledge" (Article 30 of the ICC Statute). Lastly, the motive, as well as the effective consequences, are not relevant.

In light of this preliminary reconstruction, starvation is not a relevant consequence of acts of warfare. However, the opposite will be demonstrated. This conclusion is supported by a two-fold argument: the first is a normative argument. According to Article 54(3) of the API, as will be further explained, the term "starvation" is used as a consequence of acts of warfare that leave the civilian population with inadequate food or water. The second is the *Mertens* Clause. According to this clause, "Meta-legal rules, such as those deriving from the principles of humanity and the dictates of public conscience, can be transformed into legal principles" (Ronzitti, 2021, p. 165). Based on this approach, human dignity has become an obligation-creating principle (Le Moli, 2019, p. 361), through which the principle of humanity functions as the base of a customary norm. According to the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), "[…] the primary purpose of this body of law is to safeguard human dignity" (ICTY, 1998, par. 162). Considering this point of view, human dignity as a principle of international law has two functions (Le Moli, 2019, pp. 364-367): axiologically, it is a norm that is part of the *raison d'être* of the international legal order; and, auxiliary, it serves as a tool for interpreting of the conduct of subjects of international law that, even if not explicitly prohibited, could be in violation of this principle. Specifically, according to human dignity as a reflection of the principle of humanity, the principle according to which "*quod non est prohibitum permittitur*" is not applicable in IHL (Ronzitti, p. 165). For the reasons outlined above, the term starvation carries two different meanings. First, as acts of omission or commission, perpetrated by a subject of international law in the first case, and by natural persons in the second case, during armed conflicts (both international armed conflict (IACs) and non-international armed conflict (NIACs)), with the intent to deprive the civilian population of their OIS, regardless of the motives and the actual result. Then, it refers to a factual situation in which there is an "insufficient supply or withholding of some essential commodity or something necessary to live" as a consequence of acts of warfare, regardless of the intent (Hutter, 2015, p. 6; Triffterer, Commentary to ICC Statute, art. 8). For this paper, the first meaning will be applied to the description of Article 54(1) and (2) of the API and in Article 14 of the APII; the second meaning will be used in the analysis of Article 54(3), as well as in the analysis of starvation in relation to international human rights law (IHRL).

2. IHL and Starvation: A Review of existing Law

The prohibition of deliberate starvation of the civilian population as a method of warfare was enshrined in Article 54(1) of the API and in Article 14 of the APII. Under these two articles, deliberate starvation is unlawful both for IACs and NIACs. According to those rules: "[i]t is prohibited to attack, destroy, remove or render useless objects indispensable for survival (OIS) of the civilian population" (Article 54(2) of the API). The second part of Article 54(2) of the API, as well as Article 14 of the APII, provides some examples of what OIS means, such as foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works. In addition, to qualify the conduct of attacking, destroying, removing, or rendering useless OIS as starvation, it will be necessary to demonstrate the psychological element (i.e. intent). In fact, the last part of Article 54(2) of the API recalls that the conduct must be driven by the "specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive". Moreover, the abovementioned rules are also considered part of international customary law (Henckaerts, 2005, pp. 186-190). Nevertheless, Article 54 of the API and Article 14 of the APII are not the only rules of IHL relevant to preventing starvation. The principle of distinction is also relevant: it covers the prohibition on directing attacks against civilian objects, including objects that are necessary or relevant for preventing food insecurity, even if they are not OIS. That said, if an attack is directed against a legitimate military objective, objects necessary to prevent food insecurity become subject to the proportionality rules (Article 57(2)(a)(iii) of the API).

The rule of proportionality prohibits attacks against military objectives that are expected to cause incidental harm that would be excessive in relation to the concrete and direct military advantage anticipated. Within this framework, starvation must be seen as an incidental harm and, for this reason, it must be considered in relation to the military advantage anticipated. Moreover, the prohibition on the use of means and methods of warfare also applies to those intended or expected to cause widespread, long-term and severe damage to the natural environment (Article 35 of the API; Henckaerts, 2005, pp. 151-160), as well as to the principle of humanity. Starvation could also be seen as a consequence of the means and methods of warfare related to the prohibition on forcibly displacing civilian populations.

In this brief review, it can be seen that starvation is relevant not only as a method of warfare, but that its factual consequences, even when it is not a deliberate choice of the attacker, also become a legal fact in IHL. The question is the *per se* unlawfulness of this phenomenon outside the proportionality rules and Article 54(1) of the API (as well as Article 14 of the APII).

2.1. Article 54(3): Starvation as an unlawful consequence of certain military operations

Returning to Article 54 of the API, it is possible to see how starvation as a consequence of military operations has a material connection with the law of armed conflict. Article

54(1) of the API appears to support a very narrow interpretation of starvation, limiting its unlawfulness only when the attacker has the purpose of starving civilians (see, e.g. Pilloud, et al., 1987, par. 2089; Bothe, Partsch and W.A. Solf, 2013, p. 381). State practice, as demonstrated by military manuals (e. g. US Department of Defense, 2016, para. 5.20.2) confirms this viewpoint. Still, there are other indications, in paragraph 3, that explicitly recall cases when the psychological element of the violation is less robust than intent.

Article 54(3) provides that "[t]he prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party: a) as sustenance solely for the members of its armed forces; or b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement". This provision suggests that, if the goods are used by the enemy in direct support of their actions, they cannot be attacked if the expected effect is, *inter alia*, the starvation of the civilian population. This means that the application of the principle of proportionality in this case is not requested; rather, the operation is explicitly unlawful *per se* if starvation is an expected consequence.

This brief analysis of Article 54 of the API shows how starvation in IHL is considered unlawful not only as a deliberate method of warfare but, under certain circumstances, also as an expected consequence of acts of war. As a result, if starvation emerges *ex post facto* from attacks on objects indispensable to civilian survival, there is no violation of Article 54(3). As will be discussed in the following paragraphs, even if this specific provision is not violated, obligations arise when starvation occurs as a consequence of acts of warfare, even if legitimate, particularly those originating from the humanitarian relief operations and IHRL.

2.2. Starvation and humanitarian relief operations: legal consequences of a legal relevant situation

Another area of IHL related to starvation concerns humanitarian relief operations. According to Article 69 and 70 of the API, the civilian population that is in a territory under occupation or under the control of a Party to the conflict, shall be provided with clothes, bedding, shelter and "other supplies essential to the survival of the civilian population" (Article 69 of the API). Moreover, the provision of Article 69 directly recalls Article 55 of the IV Geneva Convention, which provides "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate". Furthermore, the Parties to the conflict "shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided […], even if such assistance is destined for the civilian population of the adverse party" (Article 70(2) of the API). The relief operation must be "impartial and conducted without any adverse distinction" (Article 70 of the API). In Article 18 of the APII there is a similar rule for NIACs. Those obligations, according to the ICRC, are customary law under IACs

and NIACs (Henckaerts, 2005, pp. 193-200).

In other words, it is possible to see a triple step obligation: first, States have the obligation to meet the needs of civilians who are under their control or occupation; second, if the States who have this obligation fail to comply, an obligation arises upon those States to consent to, without arbitrarily denying, humanitarian relief operation offered by other States or humanitarian organizations; lastly, all the States shall allow and facilitate the operations. Regarding the consent, the denial of the operation is considered arbitrary in three cases: (i) when refusal creates a violation by the State of the obligation to respect the civilian population; (ii) if the withholding violates the principle of necessity and proportionality; (iii) when the refusal is unreasonable, unjust, lacking in predictability or that is otherwise inappropriate (Akande and Gilliard, 2016, pp. 483-511). It is possible to see that if there is a situation of starvation as a consequence of the military operation, withholding the consent to a humanitarian relief could be seen as arbitrary for all the reasons above, particularly in the first case. In fact, if a State is able to ensure the obligation to respect the civilian population under its control or under its occupation, this includes the ability to provide all the OIS, and all the goods mentioned in Article 70 of the API and Article 55 of the IV GC. When a State is unable or unwilling to provide to the civilian population the aforementioned objects, there is a violation of an obligation that has as beneficiary the civilian population. More specifically, Article 55 of the IV GC and Article 70 of the API are complementary in order to grant protection for the civilian population that is as broad as possible. Reading in conjunction those two provisions, it appears that when the State is unwilling to provide food and medical supplies for the population under its effective control, there is a violation of Article 55. However, the incipit of Article 55 states: "To the fullest extent of the means available to it". This means that if the State that controls the territory in which the starvation is happening has insufficient means to ensure goods in a way that prevents starvation (in other words, is unable), the State is not violating Article 55, but the obligation of Article 69 of the API or Article 70 of the API automatically emerges. According to this complementary interpretation of the two rules, there is always an obligation when the civilian population is starving as a consequence of war, and for this reason there is always an obligation on the controlling or occupying State not to deny impartial humanitarian operations.

Moving to NIACs, the same arguments developed for IACs can be applied. In fact, the provision of Article 14 of the APII is a simplified version of Article 54 of the API. Unlike Article 54, there is no paragraph 3. Nonetheless, it is possible to observe the same complementarity with the provision of humanitarian relief found in Article 18 of the APII. According to the ICRC commentary to the APII: "Protocol II is conceived in such a way that this humanitarian rule can be respected whatever the circumstances. […] As soon as there is a lack of indispensable objects, the international relief actions provided for in Article 18 (Relief societies and relief actions) should be authorized to enable the obligation following from Article 14 to be respected" (Pilloud, et al., 1987, par. 4798). Moreover, it is underlined also for NIACs that, even if starvation is explicitly prohibited only as a method of combat, "it is nowadays no longer an acceptable phenomenon, irrespective of how it arises" (Pilloud, et al., 1987, par. 4799).

3. The Right to Food in Armed Conflict

It is now generally accepted that IHRL is generally applicable during armed conflict (ICJ, 1996, par. 25; ICJ, 2004, par. 112; OHCHR, 2004, 31, par. 11). For the purpose of this paper, the right to be analysed is the right to food (Oriolo, 2014), which is provided, *inter alia*, by Article 11 of the ICESCR. The questions to address are three: (i) what is the content of the right; (ii) is the right to food part of customary law; and (iii) are the obligations regarding the right to food under IHRL and the provision of starvation under IHL complementary and, if they are not, which one would prevail. The right to food enshrined in Article 11 of the ICESCR is composed of two parts: the right to adequate food (par. 1) and the right to be free from hunger (par.2). The right to adequate food, according to the UN Committee on Economic, Social and Cultural Rights (CESCR) will be realized when everyone always has physical and economic access to adequate food or means for its procurement (OHCHR, 1999, par. 6). On the other hand, the right to be free from hunger means that the minimum nutritional intake needs to be provided, because it is necessary for survival and so it is closely linked with the right to life. As to any other human right, the rule creates three types of obligations, specifically: the obligation to respect; the obligation to protect and the obligation to fulfil (OHCHR, 1999, par.15). The obligation to respect means that States parties shall not take any measures that prohibit the people under their jurisdiction access to food, not only by destroying food or infrastructure for production, but States shall also not hinder the economic activities by which people realize the right to food on their own. The obligation to protect means that if violations are committed by third or private parties, the State has the duty to investigate, punish and prevent such violations. In other words, States have a due-diligence obligation. The obligation to fulfil the right to food is not the counterpart of the right to be fed. The primary consequence of the obligation to fulfil is that the State must facilitate people's access to food. However, when people cannot provide by themselves the necessary food for reasons beyond their control, such as armed conflicts, States are obliged to guarantee direct access to food to the people under their jurisdiction (OHCHR, 1999, par. 15). Those obligations are on States and should be achieved "progressively" and "to the maximum of [their] available resources".

The question about these obligations and armed conflict is that the State could lose control over part of its territory. In those cases, the government has no authority or control over an area, and the measures taken could be ineffective. Yet, the mere lack of control over a territory does not liberate a State of its obligations. At the same time, rights enshrined in the IHRL should be applied by States that have extraterritorial jurisdiction over the people and the territory involved (International Court of Justice, 2004, par. 112. Ryngaert, 2015. On the concept of 'jurisdiction' in human rights treaty law: Malkovic, 2011, pp. 19-53; Principle 8 and 9 of the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights; De Schutter, et al., 2012, pp. 1101-1109). Furthermore, the deprivation of necessities, including food, may also constitute a breach of "the international legal prohibition of torture and other cruel, inhuman and degrading treatment" (ICJ, 2025, par. 155), and it could also amount to extermination (HRC, 2025, par. 3). Moreover, in exceptional cases

rights can be derogated. The ICESCR does not contain a derogation clause. However, Article 4 of the ICRSCR recognizes the possibility for States to limit rights of the Covenant by law "only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society". Unlike derogation, which leads to the disapplication of the norm under the abovementioned circumstances, the limitation cannot affect the *raison d'être* of the provision and the treaty in which the norm is contained (OHCHR, 1999, par. 10). By the letter of Article 11 of the ICESCR, the *raison d'être* of the right to food is the right to be free from hunger. In fact, in Article 11(2), the right to be free from hunger is defined as a "fundamental right to everyone". Furthermore, it should be also considered, the impossibility of performing a treaty according to the principle "*ad impossibilia nemo tenetur*" (Article 61 of the Vienna Convention on the Law of the Treaties of 1969) and that the conduct of States that are not in conformity with an international obligation shall not be considered as a breach if the act is due to *force majeure* (ILC, 2001, Article 23). Both these rules are applicable to Article 11 of the ICESCR. However, since the analysis of this paper is limited to the case in which there is an armed conflict, the question is whether an armed conflict could generate the exceptions above. If the conflict is completely unexpected and the amount of violence is so high that for the defending state it is absolutely and materially impossible to comply with the right to food, the *force majeure* could be invoked, but it cannot, *in re ipsa*, be considered a situation that automatically triggers those exceptions.

The second issue is to determine whether the right to food is part of customary law. This point is important because, even if the ICESCR is widely ratified, some States, such as Saudi Arabia, Singapore and the United States of America, have not ratified it. According to some scholars, the minimum content of the right to food is part of customary law (Narula, 2006, pp. 791-797). From this perspective, the *opinion iuris* and *usus* that support the formation of the norm are evident in the different branches of international law. First, States have widely ratified several treaties that contain the right to food in its different declinations (such as the ICESCR, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child). In addition, as previously seen, customary norms that regulate the right to food in armed conflict in IHL are discernible. Moreover, several UN Security Council Resolution and UN General Assembly Resolutions underscore the importance of the right to food. Although UN General Assembly Resolutions are not binding on member States, they could reflect the *opinio iuris* of States. Some examples are Resolution 57/226 and 58/186. A further element supporting the existence of *opinion iuris* and State practice that is suitable for creating the customary norm is the discipline of sanctions in the UN framework. The Security Council, in imposing sanctions and embargoes, has always considered the need to minimize the harm to the population (Narula, p. 75-76), and in practice this reflects the necessity to provide food to the population of the State under sanctions or embargoes. Furthermore, also declarations and national legislations underline the role of customary norm of the right to food. Regarding its content, *opinion iuris* and State practice suggest that customary law only extends to the right to be free from hunger (Narula, p. 80 et seq.).

4. Conclusion: The Question of Compatibility between IHL and IHRL Obligations

The final question is whether the obligations provided by IHL and IHRL are compatible and, if not, which one should prevail. As demonstrated, IHL obligations relating to starvation include the prohibition of starvation as a method of warfare, the obligation to allow humanitarian relief operations, and, therefore, the obligation to facilitate them. Under IHRL, States have the obligation to ensure, according to customary and treaty law, the right to food, considering that the right to be free from hunger for their citizens and for the population who are, even temporarily, under their jurisdiction, is not subject to limitation. According to Jenks, there is a conflict of norms when a party to two or more international treaties "cannot simultaneously comply with its obligations under both treaties" (Jenks, 1943, p. 426). The same concept is also applicable to customary law. When a conflict of norms exists, several questions arise from legal doctrine and jurisprudence. In the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the International Court of Justice (ICJ) clearly stated that the principle of *lex specialis derogat legi generali* should be applied as a technique of interpretation in case of contrast of two or more norms simultaneously applicable. In the relationship between IHL and IHRL, IHL is considered, by the Court, as *lex specialis*, and so it shall be applied in case of conflict of norms. Nonetheless, this technique of interpretation has been subject to an evolution. The Court itself has underlined that IHRL should be applied concurrently in case of armed conflict (e.g.: ICJ, 2005, par. 216; ICJ, 2024, par. 84 et seq.; ICJ, 2025, parr. 146 et seq.; ICJ, 2004, par. 102 et seq.). Regarding the principle applicable in resolving the conflict of norms, it should be noted that, in this case, there is no conflict among the applicable norms and, consequently, among the obligations that arose from those provisions.

As shown, the obligations mentioned above are not in conflict with each other; rather, they are complementary. According to Giacca, "complementarity means that ESC rights and IHL are mutually influencing when they impose certain obligations that overlap." (Giacca, 2014, p. 186). According to this interpretation, rules that are applicable in the same situation and that derive from IHL and IHRL should be interpreted in light of one another. This means that the treaty rules and obligations concerning the right to food, in the context of armed conflicts, shall be interpreted considering the treaty and customary provisions of the applicable IHL rules. Concurrently, the treaties provisions on starvation as a consequence of acts of warfare in armed conflict shall be interpreted in light of the treaty and customary IHRL rules and obligations applicable to the parties. The same logic of interpretation could also be applied to the applicable customary rules and obligations. This systematic approach to the interpretation of the relevant rules is capable of providing coherence and predictability to international law, avoiding fragmentation and artificial separation between branches of international law (Giacca, p. 185).

In conclusion, it has been shown that starvation during armed conflicts is an unlawful phenomenon, both as a method of warfare and as a consequence of warfare. Even if the purposes of the norms under IHL and IHRL are partially different – in the first case the goal is to prevent the population from being starved, while in the second case the protection is broader, and it concerns also qualitative standards – the norms are

simultaneously applicable. The principle of human dignity, coupled with the simultaneous and complementary application of the invoked norms, could allow for the creation of a normative framework whereby the occurrence of starvation in armed conflicts generates obligations for States to protect civilians under their jurisdiction and eliminate its effects.

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HUMAN DIGNITY AND BIOMEDICINE. FROM THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract: *In the field of biomedicine, the European Court of Human Rights is most often called upon to give answers to controversial situations. At the heart of these debates is frequently the concept of human dignity.*
Although it does not enjoy an express regulation in the system of the European Convention on Human Rights, human dignity is a guiding principle mentioned in its Preamble itself. After a brief presentation of the main areas of interaction between biomedicine and human rights, the present study focuses on the analysis of how the Court approaches the concept of human dignity in cases involving bioethical problems.

Key words: *biomedicine, human dignity, ECHR case-law.*

1. Introduction

The intersection between biomedical advances and human rights constitutes one of the most complex areas of current legal and ethical discourses. The rapid pace of scientific and technological development, the use of artificial intelligence in medicine, neurotechnology are just some of the challenges inherent to the national and international legal framework of human rights. From new techniques of human reproduction to genetic interventions and medically assisted death, these innovations can benefit the human person, but simultaneously raise profound ethical and legal issues. They test the limits of existing international regulatory frameworks and go beyond the capacity of national legislative systems to adapt.

In a broad sense, biomedicine means "all applications of biological and medical knowledge and technologies to human beings" (Andorno, 2013, p. 15). Among the main areas of biomedicine that interact with human rights are: reproductive technologies and choices, genetic engineering, end-of-life decisions, gender identity and foetus/embryo status, and, more recently, emerging challenges from neurotechnology.

These constantly evolving scientific challenges are often called upon to be answered by judicial bodies, in particular the European Court of Human Rights (ECHR, "Strasbourg

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Court" or "Court"). The Court must constantly adapt to new realities and interpret fundamental human rights in situations that the creators of the European Convention on Human Rights (the Convention) could not have anticipated.

Its essential role in protecting and balancing human rights and freedoms in the face of technological progress has been constantly confirmed in the literature (Hendel, 2013; Rota, 2020; Davidenko, 2022; Czepek, 2024; Tarasevych et al., 2025 etc.), highlighting its main task of adapting existing human rights norms through interpretation to the new challenges of biomedical science. The ECHR jurisprudence on this matter serves as a guide for national courts and legislators in Council of Europe Member States and underpins legislative reforms aimed at protecting human rights in the context of medical innovations (Tarasevych et al., 2025).

More often, at the heart of the cases specific to this area to which the Court must address, is human dignity, a concept characterised as "ambivalent and multilevel" (Feuillet-Liger and Orfali, 2018; Drăghici, 2013, p. 57). Its polysemantic nature, which allows for multiple and often contradictory interpretations, poses a major challenge for any court called upon to apply it.

In this context, this article argues that, in the absence of a European consensus on deep bioethical issues, the European Court of Human Rights strategically uses the principle of human dignity as a fundamental interpretative standard. It uses dignity to mediate the conflict between the individual autonomy enshrined in Article 8 of the Convention and the State's obligation to protect life and public order provided for in Article 2. In this way, the Court gives rise to a flexible but principled European law that respects the moral, ethical and legal differences between Member States, while maintaining a common minimum standard.

2. Human Dignity – A Fundamental Principle and Value In The International And European Human Rights System

Human dignity is recognised as a fundamental value, as a principle or as a right in both international, regional, and national legal systems. The Preambles to the International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) state that all human rights derive from the inherent dignity of the human person. This formulation places dignity beyond any right recognized by the authorities, being considered the ultimate justification of the entire edifice of human rights. It is related to the essence and existence of human beings from which their fundamental rights and freedoms emanate (Nawrot, 2018).

Regionally, the European Social Charter (Council of Europe, 1996) expressly regulates the right to dignity at work by Art. 26, and the Charter of Fundamental Rights of the European Union (European Parliament, 2000) expressly stipulates by Art. 1 that "Human dignity is inviolable. It must be respected and protected".

In the specific field of bioethics, dignity has also been recognized as a guiding principle. International legal instruments, such as the UNESCO Universal Declaration on the Human Genome and Human Rights (1997) and the Universal Declaration on Bioethics and Human Rights (2005) state that human dignity, human rights, and fundamental

freedoms must be "fully respected". These documents have created a global common language to address the ethical dilemmas generated by scientific advances.

The most important document at European level is the European Convention on Human Rights and Biomedicine, known as the "Oviedo Convention" (1997) which aims to protect the dignity and fundamental rights of the individual with regard to the applications of biology and medicine. The Oviedo Convention established a set of common standards on informed consent, embryo research, and genetic testing, becoming an essential reference point for national legislation and an interpretive tool for the Strasbourg Court in the field of human rights in a bioethical and biomedical context (Seatzu & Fanni, 2015). We recall, by way of example, that in *Evans v. United Kingdom* (2007), the Court relied on Article 5 (Informed consent) of the Oviedo Convention to establish a high standard of protection of patient autonomy, and in *Costa and Pavan v. Italy* (2012), the Court referred to Article 12 (Predictive genetic testing) to support its argument on the proportionality of a ban on preimplantation genetic diagnosis.

Although this Convention does not recognise the right of individuals to refer the matter to the European Court of Human Rights, Article 29 nevertheless gives the European Court the power to issue an advisory opinion on the interpretation of this Agreement at the request of a Contracting Party. The opinion shall be without direct reference to any specific proceedings in a court. Consequently, the facts regarded as an infringement of the rights provided for in the Oviedo Convention can be analysed by the Court only in so far as they also constitute an infringement of one of the rights provided for in the 1950 Convention or its Additional Protocols (Council of Europe, Explanatory Report, 1997, p. 24).

3. Manifestations of Dignity in the Interpretation of some Key Articles of the European Convention on Human Rights

The European Convention on Human Rights does not expressly regulate "dignity" in its text. The concept is found only in the preamble of Additional Protocol no. 13 where reference is made to "the inherent dignity of all human beings". However, this fact has not prevented the Court from consistently affirming, through its case-law, that human dignity is a fundamental value and a principle underlying its entire system of protection, showing that "the very essence of the Convention is respect for human dignity and human freedom" (Le Moli, 2021). This thesis of "essence itself" transforms dignity from a mere philosophical basis into a central principle, in the spirit of which all the rights guaranteed by the Convention must be understood.

This implicit recognition of dignity allows the Court to adapt the concept to new biomedical challenges without being constrained by a rigid definition. This flexibility is a strength, as it makes it easier for the European Court to use ethical considerations in legal reasoning, especially in matters where scientific progress outweighs legislative responses.

Most often, the manifestation of the principle of dignity is found in the interpretation of three key articles of the Convention: Article 2 (Right to life), Article 3 (Prohibition of

torture) and Article 8 (Right to respect for private and family life).

In the interpretation of Art. 2, the Court developed a number of positive obligations on Member States. The content of these obligations is shaped by the need to protect the life of a dignified human being, which involves, for example, ensuring an adequate legal framework for healthcare. Also, the constant refusal to recognize a "right to die" under Article 2, despite strong claims to autonomy (Case *Pretty v. United Kingdom,* 2002; Case *Lambert and others v. United Kingdom*, 2002; Case *Lambert et al. v. France*, 2015) indicates that the Court prioritizes dignity as an inherent value of life that the State must protect, rather than as an absolute right of the individual to dispose of his or her own life. Dignity, in this context, functions as a protective shield for the vulnerable and for the sacredness of life itself, not as a sword for radical self-determination that could undermine the protective essence of Article 2.

Article 3, which prohibits torture, inhuman or degrading treatment, reflects an even stronger link with dignity. Thus, dignity becomes a fundamental element in the prevention of treatments that diminish the inherent value of a person, especially in the context of medical care, detention or in the case of people in vulnerable situations. For example, the Case *Stanev v. Bulgaria* (2012) highlights the importance of decent conditions for people in involuntary detention, where dignity is directly linked to the freedom not to be subjected to degrading treatment. The right to refuse medical treatment is also connected to Article 3 in cases of forced treatment. Moreover, the Court's case-law in this area is not limited to physical suffering alone, but examines the implication of humiliation and dehumanisation. This suggests that dignity serves as an essential benchmark for analysing what constitutes "inhuman or degrading" treatment. The Court has repeatedly held that treatment is considered "degrading" if it reaches a minimum level of severity and has the aim or effect of humiliating and demeaning the individual, depriving them of their dignity, even if it is not physically torturous (*V.C. v. Slovakia*, 2011, § 101; *G.M. and Others v. Moldova,* 2022, § 86). Thus, Article 3 protects the core of human dignity against the most serious violations.

As regards Article 8 of the Convention, the Court interpreted it extensively, considering that "private life" covers concepts such as personal autonomy, identity, physical and psychological integrity. All these concepts are essentially expressions of human dignity, reflecting the individual's right to have control over their own body, decisions, and personal information. This article is frequently invoked in evolving biomedical cases, suggesting that the Strasbourg Court considers dignity not only as an inherent value of the human being, but also as an ability of individuals to make fundamental decisions about their own bodies and lives, even if those decisions are limited by the public interest or the rights of others.

4. Human Dignity and Biomedicine in the ECHR Jurisprudence - Referential Cases

4.1. Human dignity and the beginning of life

The case-law of the European Court of Human Rights, with regard to the beginning of life, is characterized by prudence and balance, given the moral, ethical and legal differences that exist between the signatory States of the Convention. In this matter, the

Case *Vo v. France* (2004) and the Case *Parrillo v. Italy (2015)* are considered to be landmark cases which illustrate this approach. Called upon to rule on the question of the beginning of life in the case of *Vo v. France*, the Court noted that Article 2 of the European Convention on Human Rights "does not mention the temporal limits of the right to life and, in particular, does not define who is the 'person' whose 'life' is protected by the Convention" (*Vo v. France,* 2004, §75*)* and that "to date, [...] has not yet decided on the question of the beginning of the right of 'every person to life' [...] nor whether the unborn child has the right to it" *(Vo v. France,* 2004, §75*).* The Court concludes that, in the absence of a scientific and legal definition of the beginning of life and in the absence of a unitary solution as to the nature and condition of the human embryo and/or the foetus, "the issue of when the right to life begins comes within the margin of appreciation which the Court generally considers that States should enjoy in this sphere, despite an evolving interpretation of the Convention" (*Vo v. France, 2004, §82).* In conclusion, however, the Court emphasises that "The potentiality of that being and its capacity to become a person […] require protection in the name of human dignity, without making it a "person" with the "right to life" for the purposes of Article 2" (*Vo v. France,* 2004, §84).

This reasoning was reinforced in the Case *Parrillo v. Italy.* The petitioner wanted to donate the embryos created by in vitro fertilisation (IVF) for scientific research, but Italian law prohibited this. The Court had to determine whether embryos could be regarded as "goods" within the meaning of Article 1 of Protocol No. 1. The answer was negative, the Court holding that "human embryos cannot be reduced to the status of "goods" (*Parrillo v. Italy,* 2015, §215) because of their potential to develop into a human being. However, the Strasbourg Court refused to admit that the principle of respect for human dignity requires States to recognise special protection for the embryo, but preferred to leave this matter to the national margin of appreciation of States.

The field of assisted reproductive technologies provides another example of how the Court uses human dignity as a guiding principle. An analysis of the cases of *S.H. and others v. Austria* (2011) *and Costa and Pavan v. Italy* (2012) provides further arguments in this regard.

In *S.H. v. Austria*, the petitioners challenged the statutory prohibition on egg and sperm donation for in vitro fertilization. The Court concluded that there was no violation of Article 8. Its reasoning was largely based on the wide margin of appreciation given to States in this highly sensitive area. In contrast, in *Costa and Pavan v. Italy,* the Court reached a different conclusion. The petitioners, both carriers of the cystic fibrosis gene, challenged the Italian law prohibiting preimplantation genetic diagnosis. The Court found a violation of Article 8, surprisingly compared to its already outlined opinion on the matter, restricting the State's margin of appreciation. The decisive factor was an inconsistency in Italian law: the law allowed therapeutic abortion if, according to natural conception, it was discovered that the foetus suffered from the disease, but forbade the testing of embryos before implantation. The Court considered that this prohibition imposed a disproportionate burden on the couple, forcing them to choose between having no children at all and resorting to abortion (*Costa and Pavan v. Italy*, 2012).

Those two cases show that, although the Court is reluctant to substitute itself for the national legislature in biomedical matters, it nevertheless intervenes where a national law imposes excessive burdens on individuals, infringing upon individual rights, without sufficient justification. Unable to rule on the status of the embryo, the Court instead focuses on the quality of the State's decision-making process and the coherence of its laws. Dignity is protected not by defining life, but by ensuring that laws targeting potential life are consistent and do not impose disproportionate burdens on individuals. This method allows the Court to maintain a standard of ensuring dignity, both for the potential human being and for existing persons.

4.3. Human dignity and the end of life: two competing views

Pretty v. the United Kingdom and *Lambert and Others v. France* remain landmarks in European end-of-life case-law, putting the Court in a position to answer sensitive questions about personal autonomy, the dignity of the person and the limits of the right to life (Drpljanin, 2019, p. 119). In the *Pretty v. the United Kingdom* case*,* Diane Pretty, a woman suffering from a terminal neurodegenerative disease, asked the UK authorities for a guarantee that her husband would not be prosecuted if he helped her commit suicide*.* Primarily, the Court examined the complaint in the light of Article 1 (Right to life) and Article 8 (Right to privacy). If, in the case of Art. 1, the Court emphasized "the principle of sanctity of life protected under the Convention" (*Pretty v. United Kingdom*, 2002, §37 and §65), the reasoning on Article 8 was more nuanced. The Court recognized that an individual's choice to avoid what they consider to be an undignified and tormenting end of life falls within the scope of Article 8. This amounts to a recognition of dignity understood as autonomy and self-determination. However, the Court concluded that the general prohibition of assisted suicide in UK law constituted justified interference. The legitimate purpose pursued by the state was "the protection of the rights of others" (*Pretty v. United Kingdom*, 2002, § 78). In the balance between Ms Pretty's individual autonomy and the general public interest in protecting life, the Court nevertheless held that the prohibition was a proportionate measure.

The *Lambert and Others v. France* (2015) case concerned the issue of withdrawal of life-sustaining treatment. Vincent Lambert was in a persistent vegetative state following an accident. His wife and part of his family, together with doctors, considered that keeping him alive through artificial nutrition and hydration represented a therapeutic obstinacy and requested the cessation of treatment, while his parents vehemently opposed it (*Lambert and others v. France, 2015).* The case required the Court to exercise extremely delicate legal reasoning. On the one hand, there is the positive obligation of the State, according to Article 2, to protect the life of a vulnerable patient. On the other hand, there was the patient's right to self-determination (Article 8), even when expressed through previous wishes or inferred, and the need to avoid "therapeutic obstinacy" (*Lambert and Others v. France,* 2015, §156), a practice that can itself be considered an affront to dignity*.* The Court concluded that there had been no violation of Article 2 and the central element of its reasoning was deference to the "meticulous" legislative and judicial process (*Lambert and Others v. France,* 2015, §181) that took

place in France, reiterating the importance of having strong procedural safeguards at national level for taking such far-reaching decisions, especially in the absence of a European consensus.

Consequently, the Court's case-law in these cases reflects the tension between two conceptions of dignity. The first view, often aligned with the principle of the "sanctity of life", considers dignity as inherent in human life itself. From this perspective, life has an intrinsic value that must be protected from its beginning to its natural end. Dignity is respected through palliative care, alleviation of suffering, and preservation of life, and any deliberate act of shortening it is seen as a violation of that dignity (Drpljanin, 2019). The second view equates dignity with personal autonomy, self-awareness, and the ability to maintain control over one's own bodily identity and integrity. From this perspective, forcing a person to endure a state of total dependence, physical degradation or unbearable suffering can constitute the deepest violation of human dignity. Therefore, a self-determined death can be, paradoxically, a plenary affirmation of respect for human dignity and control over one's own existence (Drpljanin, 2019). The Court, as noted in Pretty and Lambert, does not entirely opt for one of those views.

The analysis of these cases reveals an implicit hierarchy in the biomedical context: the general interest of the State to protect life (Article 2) and to prevent abuse (a public policy concern) systematically prevails over the right of the individual to decide on the end of his or her own life (Article 8), unless a robust and clear national legal process dictates otherwise. Dignity is invoked to support both sides, but its aspect of "protection of the vulnerable" receives greater weight from the Court than the aspect of "personal autonomy". The main position is to protect life, and an exception can only be made if a State has democratically created a clear and solid procedural legal framework for it.

It is noted, therefore, that the Court uses a combination of instruments that relate to authority. In particular, it concerns the argument relating to the discretion of the Member States, following the finding that there is no European consensus, and the reference to epistemic authority, since the medical knowledge and experience of medical staff are used, for example, to justify the reasoning of decisions to withdraw life-sustaining treatment. Therefore, the Court's legal reasoning seeks to balance the private interests of the applicants with the public interest, understood as the interests of groups requiring special protection (Mężykowska & Młynarska-Sobaczewska, 2023).

4.4. Emerging challenges from genetic engineering and neurotechnologies

The ultimate challenge to human dignity comes from technologies such as human reproductive cloning, germline gene editing, and even technologies capable of reading, interpreting, or modifying brain activity, opening up the possibility of direct intrusions into the mental sphere, hitherto considered the ultimate sanctuary of privacy.

The most important objection raised against these practices is the risk of radical instrumentalization of the human being. Creating people to satisfy the desires of others, designed to have certain characteristics or to resemble another individual, would treat them as replaceable "copies" (replicas) rather than as unique and unrepeatable individuals (p. 962).

The case-law of the European Court of Human Rights in this area reveals a transition from a "harm-based" to a "risk-based" model of protection. In the *S. and Marper (2008)* case, which concerned the practice of the UK authorities to retain indefinitely the DNA samples and genetic profiles of persons who had been arrested, the infringement did not consist in the fact that the data had been misused, but in the fact that its retention indefinitely created an unacceptable risk of future misuse. The Court noted that "in view of the increased pace of innovation in the field of genetics and information technologies, (...) it cannot be excluded that the aspects of privacy related to genetic information may in the future be the target of attacks by other means, which today cannot be precisely foreseen" (Case *S. and Marper*, 2008, §71). The Court also noted that cell samples contain a lot of sensitive information about the individual, especially about health. In addition, "the samples contain a unique genetic code that is of great importance both for the person concerned and for the members of their family" (S. and Marper, 2008, § 72).

This preventive approach is essential to protect dignity in the face of technologies whose full implications are not yet fully known. The Court understands that, in the case of biomedical technologies, harm cannot be expected to occur. The mere existence of a system that collects and retains massive amounts of intimate biological data or that could manipulate the human mind constitutes an interference with privacy and a serious violation of human dignity. Therefore, the legal protection of dignity moves "upstream" – from remedying abuses to regulating the underlying technological systems to mitigate risks. This represents a fundamental shift in the way human rights are analysed in the 21st century.

Conclusions

Despite its conceptual ambiguity, human dignity functions as a guiding principle that guarantees that biomedical progress remains anchored in fundamental human values. Its flexibility allows the European Court of Human Rights to respond to a wide range of situations in which man may be placed, adapting the application of the Convention to the ever-changing realities of science and society.

The Court's jurisprudential framework will continue to be challenged by new technological frontiers. The profound questions raised by germline gene editing, xenotransplantation, the integration of artificial intelligence into medical decision-making, and the ongoing philosophical debate about what it means to be human in an unprecedented technological age will require increasingly sophisticated legal and ethical answers. The prudent and balanced approach of the Strasbourg Court, which has so far succeeded in maintaining a dialogue between Europe's diverse legal and moral traditions, will remain an essential pillar in the effort to ensure that humanity's biotechnological future will be one that respects, protects, and affirms the dignity of every person.

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THE NOTION OF "HUMAN DIGNITY" IN THE RECENT MIGRATION CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS: A TOOL TO EXTEND THE SCOPE OF ARTICLE 3 ECHR?

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Abstract: *The contribution discusses the migration-related case-law of the European Court of Human Rights in which a violation of the prohibition of torture, inhuman or degrading treatment has been found, with a view to verifying whether – and if so, to what extent – the concept of human dignity is used by the Court to expand the protection of migrants within the scope of Article 3 of the ECHR. It will be submitted that human dignity not only plays a crucial role in the assessment of living conditions under Article 3 of the European Convention of Human Rights but, at least in certain cases, also justifies an expansive function of migrants' rights, including access to a minimum level of social and economic rights.*

Key words: *human dignity; migration; European Court of Human Rights; prohibition of torture, inhuman and degrading treatment*

1. Introduction

The recognition of dignity as an essential "quality" of every human being lies at the core and foundation of the international protection of human rights (Gilabert, 2018; De Sena, 2017; Barak, 2015; Capps, 2009; Shultziner, 2004; Carbonari, 2002; Frowein, 2002; Zajadlo, 1999; Schachter, 1983). Human dignity is explicitly included in several international legal instruments ranging from the Preamble of the Charter of the United Nations and the Universal Declaration of Human Rights to international human rights treaties and regional agreements (Dicke, 2002), exception made for the European Convention on Human Rights (ECHR or the Convention), which does not actually mention the notion in question (Di Stasi, 2011).

Notwithstanding this, the "respect for human dignity" has acquired significant relevance in the case-law developed over time by the European Court of Human Rights (ECtHR or the Court) (Fikfak, Izvorova, 2022; Kuteynikov, Boyashov, 2017; Costa, 2013) to the point that this concept is considered to represent the very essence of the

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European Convention on Human Rights (ECtHR: judgment of 22.11.1995, application n. 20166/92, S.W. v. United Kingdom, para. 44; judgment of 22.11.1995, application n. 20190/92, C.R. v. United Kingdom, para. 42; judgment of 29.4.2002, application n. 2346/02, Pretty v. United Kingdom, para. 65). Therefore, human dignity can be considered as a foundational value that provides the rationale for the protection of the rights set out in the ECHR, as well as unites those rights around a common core (Bedford, 2020). In addition to this foundational role, human dignity has also been deployed in judicial reasoning in order to shape the scope and application of rights set out in the Convention (Di Stasi, 2024; Le Moli, 2021; McCrudden, 2008). Such an approach can be seen in relation to most of the rights in the Convention, but it is particularly evident when Article 3 of the ECHR is at stake (Webster, 2018). Indeed, as will be shown, the "interpretative link" between the idea of human dignity and the kind of harm that is perceived as torture, or inhuman or degrading treatment is well established in the case-law of the ECtHR and seems to emerge in particular when the Court is called upon to decide on the application of Article 3 of the ECHR in the context of migration (Ippolito, 2020).

In light of the above, the present contribution aims at discussing the migration-related practice of the ECtHR in which a violation of the prohibition of torture, inhuman or degrading treatment has been found, with a view to verifying whether – and if so, to what extent – the concept of human dignity is used by the Court as a legal tool to expand the protection of migrants within the scope of Article 3 of the ECHR. To do so, after providing an overview of the notion of "human dignity" in the ECtHR case-law concerning the prohibition of torture, inhuman or degrading treatment, the present contribution will focus on the key cases concerning migration where recourse to human dignity has been central to the finding of a violation of Article 3 of the ECHR.

2. The Notion of Human Dignity in the ECtHR Case-law on Article 3 ECHR

As anticipated, the text of the ECHR does not include a specific reference to human dignity. Nonetheless, such a lack has not prevented the ECtHR from using the notion in question within the reasoning leading to a violation of specific rights guaranteed by the Convention, such as the prohibition of torture, inhuman or degrading treatment enshrined in Article 3. In this regard, in 1978, the Court explicitly mentioned human dignity in the judgment in the case of Tyrer v. UK to determine whether the judicial corporal punishment of birching, administered to a 15-year-old for assault, amounted to degrading punishment in breach of Article 3 (ECtHR, judgment of 25.4.1978, application n. 5856/72, Tyrer v. United Kingdom). According to the Court, the fact that the applicant had been treated "as an object in the power of the authorities" represented "an assault on precisely that which it is one of the main purposes of Article 3 to protect, namely a person's dignity and physical integrity" (Tyrer v. United Kingdom, para. 33). Again, in 2000, in the judgment in the case of Kudła v. Poland (ECtHR, judgment of 26.10.2000, application n. 30210/96, Kudła v. Poland), the Grand Chamber affirmed the right of every person in prison to conditions of detention consistent with respect for human dignity, clarifying that "[t]reatment is considered to be 'degrading' when it humiliates or

debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance" (Kudła v. Poland, para. 92).

More recently, the ECtHR has provided a thorough analysis of the relevance of human dignity in the judgment in the case of Bouyid v. Belgium (ECtHR, judgment of 28.9.2015, application n. 23380/09, Bouyid v. Belgium), where the Grand Chamber was asked to consider whether slapping in the face a minor and an adult in police custody constituted a violation of Article 3. After reminding the absolute character of the provision in question, which enshrines one of the most fundamental values of democratic societies, the ECtHR highlighted the importance of human dignity within the ECHR system and concluded that "[a]ny interference with human dignity strikes at the very essence of the Convention" (Bouyid v. Belgium, para. 101). Consequently, as observed by the Court, "any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question" (ibidem).

Finally, the Court made several references to dignity in cases concerning persons deprived of their liberty generally considered to be in a vulnerable situation. Although measures depriving a person of his liberty may often entail an inevitable element of suffering and humiliation, it cannot be said that the execution of detention on remand in itself represents a violation of Article 3. According to the Court's established case-law on this provision, States must ensure that a person is detained in conditions "compatible with respect for human dignity", meaning that the manner and method of the execution of the measure must not expose them to distress or hardship of a degree exceeding the unavoidable level of suffering inherent in detention, and that their health and well-being are adequately safeguarded, having regard to the practical requirements of detention (Kudła v. Poland, paras. 92-94).

3. The Use of Human Dignity in the ECtHR Migration-related Case-law on Article 3 ECHR

The above-discussed conclusions reached by the European Court of Human Rights about the link between the issue of human dignity and the kind of harm that is perceived as torture or inhuman or degrading treatment under Article 3 of the ECHR have been recently used by the Court in its reasoning in several cases concerning different situations related to migration.

In this regard, a landmark case is represented by M.S.S. v Belgium and Greece (ECtHR, judgment of 21.1.2011, application n. 30696/09, M.S.S. v. Belgium), in which the ECtHR recognised that human dignity is relevant to establish that living conditions of migrants outside detention can raise an issue under Article 3. The Court examined the alleged violation of the provision in question regarding the applicant's standard of living in Greece, pointing out that Article 3 in no way can be interpreted as obliging a State to provide housing to everyone, and does not impose any obligation on the State to provide financial assistance to refugees in order to maintain a certain standard of living (M.S.S. v. Belgium, para. 249). Notwithstanding this, the Court considered the fact that

Greece had undertaken obligations towards the reception conditions of asylum seekers and transposed them into national law. Moreover, it attached "considerable importance to the applicant's status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection" (M.S.S. v. Belgium, para. 251). In view of these considerations, the Court found a violation of Article 3 because the situation in which the applicant had "found himself for several months, living on the streets, with no resources or access to sanitary facilities, and without any means of providing for his essential needs" coupled with the lack of any likelihood of this situation improving, infringed the applicant's human dignity and amounted to inhuman and degrading treatment (M.S.S. v. Belgium, para. 263). The Court took the same stance nine years later, in N.H. and others v. France (ECtHR, judgment of 2.7.2020, applications nos. 28820/13, 75547/13 and 13114/15, N.H. and others v. France), a case concerning five asylum seekers who, due to administrative delays preventing them from receiving the support provided for by law pending their asylum application, were forced to live rough in the street for several months, without access to sanitary facilities, having no means of subsistence and constantly in fear of being attacked or robbed. The Court found that the authorities had failed to fulfil their duties towards the applicants under domestic law and had not provided an appropriate response upon being alerted to the applicants' precarious situation. Accordingly, the applicants had been victims of degrading treatment, with the authorities showing disrespect for their dignity, that had exceeded the threshold of severity for the purposes of Article 3 of the Convention.

In the time between M.S.S. and N.H. cases, the ECtHR made use of the notion of human dignity also in a few cases concerning the material conditions of migrants – in particular, migrant children – detained by State authorities. For instance, in 2011 in Rahimi v. Greece (ECtHR, judgment of 5.4.2011, application no. 8687/08, Rahimi v. Greece), the ECtHR ruled on the detention of a fifteen-year-old unaccompanied asylum-seeker from Afghanistan. The Court first emphasised the extremely vulnerable condition of the applicant due to his age and personal circumstances, and that the authorities had failed to take into account his individual situation when detaining him (Rahimi v. Greece, para. 86). It then pointed out that the conditions of detention in the centre, particularly the accommodation, hygiene and infrastructure, had been so bad as to undermine the very meaning of human dignity (ibidem). Accordingly, and notwithstanding the detention had lasted for only two days, such conditions had in themselves amounted to degrading treatment in violation of Article 3.

A similar approach was taken by the Court the following year in the case of Popov v. France (ECtHR, judgment of 19.1.2012, applications nos. 39472/07 and 39474/07, Popov v. France), concerning the detention of a married couple from Kazakhstan and their two young children in a centre authorised to accommodate families. The Court found a violation of Article 3 only in relation to the children (who were detained for two weeks, in an adult environment with automatic doors to the rooms, which was dangerous for them, as well as with a strong police presence, with no activities to keep them occupied, combined with their parents' distress), but not their parents, as the fact that they had not been separated from their children, must have somewhat alleviated the feelings of

helplessness, distress and frustration related to the detention.

Such a trend has been subsequently confirmed in the cases of M.D. and A.D. v. France (ECtHR, judgment of 22.7.2021, application no. 57035/18, M.D. and A.D. v. France), where the Court found that the competent authorities had subjected a mother of Malian origin and her four-month-old daughter to treatment exceeding the level of severity required for Article 3 having regard to the very young age of the child, the material conditions of detention contrary to human dignity and the length of the detention (11 days); M.H. and others v. Croatia (ECtHR, judgment of 18.11.2021, applications nos. 15670/18 and 43115/18, M.H. and others v. Croatia), in which a violation of Article 3 was identified because the child applicants had been kept in an immigration detention centre with prison-type elements for more than two months, but the conditions were not ill-suited to the adult applicants; and recently Darboe and Camara v. Italy (ECtHR, judgment of 21.7.2022, application no. 5797/17, Darboe and Camara v. Italy), in which a violation of Article 3 was found because the applicant – a Guinean national who, upon arrival on a makeshift vessel in Italy, declared that he was 17 years old – was transferred to an adult reception centre, overcrowded and lacking in facilities and healthcare.

In line with this approach is also the judgment delivered in 2016 in the case of Khlaifia and others v. Italy (ECtHR, judgment of 15.12.2016, application no. 16483/12, Khlaifia and others v. Italy), concerning the detention and expulsion of three nationals of Tunisia attempting to reach Italian shores during the Arab Spring. In the case in question, the Court did not find a violation of Article 3 on the basis of the situation in the reception centre because the applicants' stay in the Lampedusa detention centre was only for a short period of 3-4 days, they were not in a vulnerable position – as they "were not asylum-seekers, did not have the specific vulnerability inherent in that status", "did not claim to have endured traumatic experiences in their country of origin", "they belonged neither to the category of elderly persons nor to that of minors", and "did not claim to be suffering from any particular medical condition (Khlaifia and others v. Italy, para. 194) – and the conditions of detention were not so severe as to undermine the very essence of their human dignity.

The ECtHR has used the notion of human dignity also in a line of cases concerning *de facto* detention in a transit zone at the border as a criterion to conclude that, in order to comply with Article 3 of the ECHR, State authorities must ensure that the living conditions of migrants confined there include also the availability of food and medical care. Indeed, in the case of R.R. and others v. Hungary (ECtHR, judgment of 2.3.2021, application no. 36037/17, R.R. and others v. Hungary), the Court found a violation of Article 3 because the conditions of the transit zone at the border of Hungary and Serbia exceeded the threshold of severity for a dependent repeat asylum seeker (because of his situation of extreme poverty) and his vulnerable pregnant wife and minors, confined for nearly four months. Indeed, on account of R.R.'s (the father) lack of access to food and his condition of indigency, the Court emphasised that the applicant could not leave the transit zone and as a result, was fully dependent on the Hungarian authorities for his most basic human needs. In reference to S.H. (the mother) and the children's complaint under Article 3, the ECtHR pointed to the obligations under the Reception Conditions

Directive that require the specific situation of minors and pregnant women to be taken into account, along with any special reception needs linked to their status throughout the duration of the asylum procedure. In the case in question, according to the Court, the physical conditions of the container were inadequate, and the lack of proper ventilation made the family suffer from the heat. Moreover, the facilities were unsuitable for children in the isolation section with no organised activities, no playground and no contact with other families or NGO staff. The provision of medical services was also problematic in respect of the lack of vaccination for the youngest child and the presence of police officers during medical consultation appointments, in particular gynaecological examinations (R.R. and others v. Hungary, para. 60).

Such an approach has been confirmed the following year, in the case of H.M. and others v. Hungary (ECtHR, judgment of 2.6.2022, application no. 38967/17, H.M. and others v. Hungary), regarding confinement of an Iraqi asylum-seeker's family in the Tompa transit zone. The Court found a violation of Article 3 on account of the living conditions for over four months of a vulnerable pregnant woman and her children, which attained the threshold of severity required to engage Article 3. Indeed, as regards the first applicant (husband and father), the ECtHR concluded that handcuffing him and attaching him to a leash (not being imposed in connection with lawful arrest or detention, and in the absence of any security risk warranting the measure) when accompanying his pregnant wife to hospital, was unjustified and diminished his human dignity.

Finally, it is worth noting that, more recently, the Court has invoked human dignity also as a parameter to determine that the procedure by which migrants are required to undergo searches may entail treatment contrary to Article 3 of the ECHR. In 2022, in Safi and others v. Greece (ECtHR, judgment of 7.7.2022, application no. 5418/15, Safi and others v. Greece), the ECtHR held that the conditions of body searches imposed on some migrant survivors of a shipwreck amounted to a violation of Article 3, as they constituted an attack on human dignity. Indeed, the applicants were taken to an open-air basketball court, ordered to undress together as a group, and subjected to a body search in front of the other survivors and a group of soldiers. In addition, as noted by the Court, they were in an exceedingly vulnerable position, having just survived a sinking at sea and the loss of some of their loved ones (Safi and others v. Greece, para. 196). Finally, the Court observed that the Government did not explain why the strip-search had been necessary to ensure safety. Nor did they argue that there had been any other public-policy considerations requiring the search to be carried out (Safi and others v. Greece, para. 195).

4. Conclusions

The analysis of the migration-related case-law of the European Court of Human Rights in which a violation of Article 3 of the ECHR has been found has shown that the position of the Court is that exposure to certain situations of material deprivation can be incompatible with human dignity, particularly in the context of detention and outside detention of migrants, and raise an issue under Article 3 of the ECHR. But, whilst

necessary, the gravity of migrants' living conditions alone is not sufficient to lead to a violation finding. Indeed, a significant part of the Court's reasoning for finding a violation of Article 3 of the ECHR is that migrants – and asylum seekers in particular – are members of a particularly underprivileged and vulnerable population group in need of special protection, coupled with other criteria such as the existence of state obligations towards such individuals, the length of the situation of material deprivation or – when it comes to the detention of migrant children – the age of the child detained. Notwithstanding this, human dignity plays a crucial role when the Court is called to assess material conditions under Article 3 of the ECHR in the context of migration, as it seems to justify an expansive function of migrants' rights, including access to a minimum level of social and economic rights, such as accommodation and access to sanitary and cooking facilities. In so doing, the Court contributes to emphasizing the interrelation between and indivisibility of human rights and it "merges", at least to some extent, the right not to be subjected to torture or degrading and inhumane treatment with some embryonic forms of socio-economic rights.

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DISCRIMINATORY NEUTRALITY: "COERCIVE INCLUSION" AND OTHER EVOLUTIVE TRENDS OF SEX-BASED VIOLENCE IN INTERNATIONAL LAW

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Abstract: *This article examines the new frontiers of violence against women and girls that continue to undermine their dignity. It begins by analysing the various manifestations of sex-based discrimination that give rise to such violence. It then turns to the evolving phenomena that blur or erase sex-specific considerations, particularly through the adoption of so-called "neutral" language. The article concludes with observations aimed at strengthening States' capacity to identify, assess, and eliminate these forms of sex-based violence.*

Key words: *coercive inclusion, discrimination, human dignity, femi-genocide, neutral language, sex-based violence*

1. Introduction

Across the world and throughout history, violence against females – women and girls – remains a global emergency, with sex-based offences and crimes continuing to rise. These forms of violence reflect the more traditional and well-known manifestations of discrimination rooted both in "sex", denoting biological and reproductive characteristics, and in "gender", referring to the social meanings attached to biological differences – such as stereotyped roles, beliefs, biases, social expectations, and cultural norms – that perpetuate the subordination of women to men. In recent years, however, women and girls have faced evolving expressions of this "historical" discrimination, alongside new and emerging forms of sex-based violence (HRC, 2025).

Building on an analysis of the legal framework for achieving "gender" equality through the prohibition of "sex" discrimination (Section 2), this article then examines the emerging forms of sex-based violence, critically exploring the consequences of erasing sex-specific considerations, with particular attention to the so-called "neutral" language that has contributed to the conceptual disappearance of the female category, undermining the protection of women and girls (Section 3). It further examines how

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established forms of sex-based violence – including reproductive violence and the female segregation – have taken on a new dimension, particularly in relation to the "femi-genocide" allegedly perpetrated by the Taliban regime in Afghanistan and by Israel during the recent conflict in Gaza, reportedly characterised by a *mens rea* to physically and biologically destroy the targeted female population (Section 4). Finally, the article offers concluding observations aimed at ensuring the correct interpretation and application of the existing legal framework on sex-based offences against women and girls, as well as strengthening States' capacity to identify, assess, and eradicate such violence (Section 5).

2. The International Legal Framework for Achieving "Gender" Equality Through the Prohibition of "Sex"-Based Discrimination

Women and girls play a crucial role in all aspects of society – from economics to politics, from family to community – and the continued prevalence of violence and discrimination against them remains a major impediment to achieving Goal 5 of the Sustainable Development Goals (SDG): gender equality (Skjerven and Fordham, 2023) and the empowerment of all women and girls as a necessary foundation for a peaceful, prosperous, and sustainable world. SDG 5 includes several specific targets, such as ending all forms of discrimination against women and girls everywhere, in both the public and private spheres; giving females equal rights to economic resources and access to ownership and control over land and other forms of property, financial services, inheritance, and natural resources, in accordance with national laws; strengthening women's participation in decision-making processes at all levels; and – returning to the heart of this analysis – eliminating all forms of violence against women and girls, including harmful practices such as child marriage, female genital mutilation, and other forms of exploitation.

International legal instruments at both the universal and regional levels establish a clear framework for ensuring equal civil, political, economic, social, and cultural rights for women and girls, including, *inter alia*, the right to life, health, education, and freedom from violence. This framework is grounded in the 1948 Universal Declaration of Human Rights and further developed through a series of key treaties, including the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1989 Convention on the Rights of the Child, the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1994 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

These instruments are fundamental to advancing both gender and sex equality for two main reasons. First, they affirm that women and girls must not be predestined to a life of subordination because of their sex. Second, they contribute to emphasising the importance of recognising "biological sex" – in addition to and distinct from "gender" – when addressing the specific forms of oppression faced by women and girls.

CEDAW defines discrimination against women as any act or measure that distinguishes, excludes, or restricts individuals "on the basis of sex", where such actions have the purpose or effect of undermining women's equal recognition and enjoyment of human rights and fundamental freedoms, whether in political, economic, social, cultural, civil, or other domains, regardless of marital status (Art. 1). Similarly, the ICCPR requires States to prevent sex-based harassment and violence to ensure the protection of privacy, freedom of expression, political participation, and equality before the law (Arts. 17, 19, 25, 26). The Convention on the Rights of the Child affirms that all children must enjoy all rights without discrimination of any kind, including sex discrimination (Art. 2).

Building on these instruments, the 1998 Rome Statute of the International Criminal Court was a landmark treaty that recognised a wide range of sex-based offences as war crimes and crimes against humanity. The Statute also reflects a broader trend of conflating the terms "gender" and "sex", categorising crimes involving sexual, reproductive, and other gender-based violence as "gender-based crimes" (Barbara & Hall-Martinez, 1999; SáCouto and Cleary, 2009) rather than "sex-based crimes". Nevertheless, it was the first treaty to explicitly define acts such as rape, sexual slavery, enforced prostitution, forced pregnancy, and forced sterilisation as distinct war crimes (Art. 8(2)(b)(xxii)). It also includes "persecution on the basis of gender" as a crime against humanity (Art. 7(1)(h)), while the ICC *Elements of Crimes* include "sexual violence" among acts constituting genocide (Art. 6 (c)).

It is important to clarify here that the confusion between the terms "gender" and "sex" in the Rome Statute is primarily terminological. Substantively, both terms refer to the distinction between male and female (ICC Statute, Art. 7 (3)). Consequently, this "binary" interpretation has not impeded the effective investigation and prosecution of crimes against the dignity of women. In contrast, other international instruments have drawn a deliberate and sometimes oppositional distinction between (biological) sex and gender (identity), thereby limiting the effective protection of women as such.

These considerations, along with the importance of prohibiting sex-based discrimination as a means to achieve gender equality and safeguarding women's dignity, are further underscored by the findings of the *Report of the Special Rapporteur on Violence against Women and Girls, Its Causes and Consequence*s, Reem Alsalem, submitted to the United Nations Human Rights Council in June 2025 (HRC, 2025), as discussed in the following sections.

3. The "International Push" to Erase Sex-Specific Considerations as a Root Cause of New Forms of Attack on Female Dignity

The 2025 UN *Report on Violence Against Women and Girls* identifies new forms of sex-based violence against females, highlighting that discrimination and attacks on female dignity stem, *inter alia*, from a recent "concerted international push" to eliminate sex-specific considerations (ibid., para. 13). While sex is one of the fundamental elements of an individual's legal identity, alongside name, place, and date of birth (E/CN.3/2020/15, para. 4), many States and international institutions have in recent years adopted an

overly rigid policy of so-called "neutrality". This coercive form of inclusion, ostensibly intended to protect women and girls from discrimination, has instead produced the opposite effect: it erases their recognition as a distinct category in law and society.

A prime example of this discriminatory neutrality is the removal of sex-specific language (see UN Women, 1987; European Parliament, 2008), which diminishes women's visibility in both law and policy. In many cases, sex-specific terms have been replaced with seemingly neutral language (Mossman, 1995), or redefined to refer to gender identity rather than sex (HRC, 2025, para. 14). Consequently, the legal and social category of biological females is becoming obscured, making sex-based oppression more difficult to identify and address.

In recent years, international institutions, including the United Nations (UNODC, 2022), have increasingly preferred to collect data based on "gender" rather than "sex", or have used the two terms interchangeably to promote the self-identification of gender identity (O'Halloran, 2020). This trend is based on the (mistaken) assumption that terms such as "sex-based violence" exclude transgender, non-binary, and gender-diverse (TGDNB) individuals from protection.

In reality, collecting sex-based data facilitates the tracking of outcomes for distinct groups, the elimination of unfair disparities, and the provision of targeted support. It neither reduces individuals to biological categories nor denies that TGDNB persons may also experience discrimination and violence on the basis of sex. On the contrary, the absence of data disaggregated by biological sex hinders the ability to gather the information necessary to end violence against women and girls.

Furthermore, violence against women is inherently gender-based and rooted in sexual stereotypes that have historically subordinated women to men (Istanbul Convention, Preamble) and reduced them to objects. However, when seeking to combat such stereotypes, States often conflate measures relating to personal identification with those addressing personal stereotypes. This risks reinforcing the very stereotypes it seeks to dismantle, rendering the specific vulnerabilities faced by women – including those who do not identify as such – invisible, and obstructing the development of a genuinely intersectional approach.

The language and terminology used to describe females directly influence how violence is understood, reported, and perceived within society. Neutral approaches to sex and gender contribute to victim-blaming, minimise abuse, reinforce male privilege, and impair the capacity of States and other actors to identify and define violence against females as primarily male violence, thereby making it more difficult to combat (HRC, 2025, para. 25).

The aforementioned trend towards "neutral approaches" to sex and gender has, above all, undermined the development of effective State policies promoting equality. In several countries, the shift from "equality between women and men" or "sex equality" to "gender equality" in national policies and objectives has led to the reduction or elimination of funding initiatives specifically supporting women or particular groups of women, including organisations assisting victims of male violence (ibid., para. 27).

Secondly, the erasure of sex-specific considerations has resulted in the denial of sex-specific needs, such as access to single-sex services and spaces, measures that are vital in contexts where women and girls are particularly vulnerable or require privacy from men (ibid., para. 30). These vulnerabilities and corresponding risks are evident in prisons, for example, where male prisoners who identify as women may be transferred to female facilities despite exhibiting a male pattern of criminality, including violent offences against women and children.

Similar concerns arise in healthcare settings that fail to differentiate patient accommodation by sex, as well as in refugee centres where women and girls, seeking to avoid the risk of rape or sexual assault, may refrain from using mixed-sex facilities, often at the expense of their health, dignity, and well-being.

4. The New Dimensions of the Offences to Female Dignity

4.1. Technology-facilitated violence against women and girls

Among the evolving forms of sex-based crimes, violence against women and girls perpetrated through digital technologies has become a pressing concern. The 2024 *Report of the UN Secretary-General on Violence Against Women and Girls* (UN General Assembly, 2024) identifies three interconnected challenges driving this phenomenon: the increasing pushback against women's rights; the acceleration of artificial intelligence (AI); the rapid advancement of a digital ecosystem of misogynistic content that is progressively permeating mainstream culture, shaping societal perceptions of women, and inciting hostility and violence.

This emerging form of abuse, referred to as "technology-facilitated violence" (Marganski and Melander, 2021) against women and girls, includes any act that is enabled, intensified, or amplified through information and communication technologies or other digital means, and that causes, or is likely to cause, physical, sexual, psychological, social, political, or economic harm, or otherwise violates women's rights and freedoms.

While such offences often originate in the online sphere, they have real-world, offline consequences. In this sense, the concept of "technology-facilitated violence" is both distinct from and broader than that of "digital" or "online" violence, as it more accurately reflects the ways technology enables, extends, and intensifies harm across both virtual and physical realms.

Crimes encompassed by this concept include pre-existing forms of gender-based violence exacerbated by technological means, such as stalking and the non-consensual dissemination of intimate images (revenge porn), as well as new manifestations enabled by emerging technologies. For instance, smart home devices and mobile applications can be exploited to track women's locations, addresses, and daily routines, thereby facilitating domestic abuse and coercive control. Another example is the creation of deepfakes: AI-generated manipulated images depicting sexual acts or abuse (HRC, 2025, para. 56).

4.2. Genocidal reproductive violence against women and girls, "gender apartheid", and "femi-genocide" in international crises

In addition to forced pregnancy, forced abortion, forced sterilisation, and forced contraception, new forms of reproductive violence affecting women and girls have recently emerged in international conflicts and humanitarian crises, including in Gaza, Myanmar, and Sudan (Anderson, 2025). These acts involve the *systematic* use of reproductive violence against women and girls with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, reflecting a genocidal purpose aimed at preventing births within the group or forcibly altering its demographics (HRC, 2025, para. 48).

Reproductive violence as a genocidal tool appears to have been used against Palestinian women in Gaza, for example. Since 2023, Israel has reportedly implemented "measures intended to prevent births within the group," which fall within the scope of Article 2 of the 1948 Genocide Convention. These measures allegedly include, *inter alia*, the destruction of healthcare facilities, such as the only fertility clinic in the occupied territories, and the imposition of living conditions that lead to malnutrition and dehydration, undermining the ability of pregnant and lactating women to produce milk (Oriolo, 2025). In response to the "plausible" risk of genocide against the Palestinian population, the International Court of Justice (ICJ) adopted urgent *interim* measures to mitigate the risk of further harm (ICJ, 2024, paras. 54, 66, 74).

Similarly, Article 2 of the Genocide Convention has been invoked by Gambia in its ICJ application against Myanmar for failing to prevent and punish genocide against the Rohingya people (ICJ, 2019, para. 2). In particular, the systematic restrictions on the Rohingya's ability to marry and bear children are considered genocidal, as they are intended to destroy this group in whole or in part.

According to UN experts, genocidal intent is evident in the reproductive crimes systematically perpetrated by the Rapid Support Forces against non-Arab ethnic groups since the outbreak of civil war in Sudan in 2023. These crimes, including rape, gang rape, sexual slavery, and deliberate genital mutilation, have reportedly been carried out to maximise trauma and social stigma for female victims. The attacks appear intended to prevent births within the targeted groups through the infliction of severe physical and psychological harm, constituting genocidal acts against women under Article 2(b)–(d) of the 1948 Genocide Convention (OHCHR, 2024).

Beyond reproductive violence aimed at destroying a protected group either wholly or in part, new expressions of genocidal violence against women as a distinct group within a nation or people have also emerged. This is exemplified by the systematic and extensive restrictions imposed on Afghan women by the Taliban regime since 2021. These measures have so severely curtailed women's rights and freedoms, including the right to work, access to education, freedom of movement, and freedom of expression, that scholars and experts have coined terms such as "gender apartheid" and even "femi-genocide" to describe the situation (HRC, 2025, paras. 40-43; Hefti, 2023). In this context, Afghan women, and, in light of more recent events in Gaza, Palestinian women, could be considered a "national group" protected under the 1948 Genocide Convention, with the offences committed against them falling within the scope of Article 2(b)–(d).

This interpretation aligns with the broad understanding of "protected groups" reflected in the Convention's *Travaux Préparatoires* (Abtahi & Webb, 2008). Moreover, this framing underscores the gravity of the crimes, revealing a deliberate intent to destroy the physical and psychological integrity of the targeted women.

5. Concluding Remarks

States have a duty to eliminate sex-based violence and discrimination by taking coordinated legal, social, and cultural action. This entails adopting and enforcing laws that criminalise practices such as forced marriage and domestic abuse, promoting changes to social and cultural norms that perpetuate bias, and ensuring gender-sensitive judicial procedures and victim support mechanisms, including access to shelters and counselling (CEDAW, 2017).

While recognising the growing international emphasis on gender identity, this paper underscores that acknowledging the reality of biological sex remains essential to addressing specific violations of female dignity. In particular, the effective elimination of discrimination against women and girls requires their clear recognition as a distinct legal and social category. Failing to do so risks adopting policies of "coercive neutrality" that could weaken States' capacity to prevent, address, and eliminate male violence against women and girls (HRC, 2025, paras. 13-24). "Coercive neutrality", together with other emerging forms of sex-based violence, warrants the adoption of specific legal provisions aimed at their prevention and repression. Pending the development of such norms, we believe that a more flexible interpretation of the existing legal framework could nonetheless advance the protection of female dignity and the fight against discrimination.

This approach would entail not only interpreting the relevant treaties "in good faith, in accordance with the ordinary meaning to be given to the terms in of the treaty, in their context and in the light of its object and purpose", as required by the 1969 Vienna Convention on the Law of Treaties (Art. 31), but also in a manner that ensures their maximum effectiveness, consistent with the principle of "*effet utile*" (*ut res magis valeat quam pereat*) (Fitzmaurice, Elias and Merkouris, 2010), so as to ensure the fullest possible application of international norms protecting women and girls.

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SUSTAINABLE DEVELOPMENT AND THE PROTECTION OF HUMAN DIGNITY: LEGAL PERSPECTIVES BETWEEN INTERNATIONAL AND EU LAW

Carmela PAGANO[1]

Abstract: *The principle of human dignity has become increasingly central in international and European legal discourse. It functions both as a foundational value and as a legal standard for a rights-based approach to sustainable development. The 2030 Agenda explicitly links dignity, equality, and environmental well-being. The paper examines the normative and procedural connections between dignity and sustainable development in international and EU law. It analyses the legal status of dignity in international treaties and EU primary law. The study highlights dignity's potential to guide legal interpretation and sustainability policies. Selected case law shows courts increasingly invoking dignity in environmental and climate-related cases. The paper also explores dignity's role in addressing climate inaction and social exclusion. Special attention is given to the protection of vulnerable groups and future generations. Ultimately, it argues for recognizing dignity as a normative benchmark and enforceable right in sustainability law.*

Key words: *human dignity, sustainable development, human rights, environmental justice, EU law, climate litigation, vulnerable groups*

1. Introduction

1.1. Context and relevance

In the 21st century, human societies face a convergence of existential challenges, climate change, resource depletion, biodiversity collapse, pandemic risks, and persistent social inequalities. In response, law and policy at the global and regional levels have increasingly turned to the concept of sustainable development as a normative and operational framework. Defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs, this concept, first introduced in the 1987 Brundtland Report, has since evolved into a cornerstone of international cooperation, notably through the 2030 Agenda for Sustainable Development.

Concurrently, the principle of human dignity, long present in international human rights law—has gained renewed prominence, particularly in the legal orders of the European Union and the Council of Europe. Dignity has shifted from a philosophical

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abstraction to a legally actionable standard, invoked by courts, legislators, and institutions as a means to assess the fairness, legitimacy, and proportionality of public and private actions.

1.2. Research objective

This paper investigates the interplay between human dignity and sustainable development in legal terms. It explores how dignity can function not only as a moral foundation but also as a legal principle guiding the interpretation, application, and enforcement of sustainability-related norms. The paper argues that integrating dignity into the normative structure of sustainability law can enhance both the legitimacy and the efficacy of environmental and social protection.

In particular, this study seeks to: Reconstruct the legal status of dignity in international and EU law; Analyse how dignity informs judicial decisions related to climate change and environmental protection; Assess how dignity can serve as a framework for protecting vulnerable groups and intergenerational equity; Propose ways to institutionalize dignity as a benchmark in sustainability governance.

1.3. Methodology and structure

The paper adopts a comparative and interdisciplinary legal methodology, drawing from international treaties, EU law, constitutional practice, and recent jurisprudence. It includes doctrinal analysis, legal interpretation, and normative evaluation.

The structure is as follows: Section 2 explores the legal concept of human dignity in international and EU frameworks; Section 3 examines the link between dignity and sustainable development; Section 4 analyses the relevance of dignity to the protection of vulnerable populations; Section 5 reviews landmark judicial and institutional practices; Section 6 presents a critical reflection on challenges and future developments; Section 7 offers concluding remarks and proposals.

2. The Principle of Human Dignity in International and European Law

2.1 Human dignity in International Law

The concept of human dignity has long been central to the philosophical foundations of human rights, but its legal codification in international law began in earnest after World War II. The Charter of the United Nations (1945) affirms in its preamble the determination “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person.” This foundational language sets the tone for the Universal Declaration of Human Rights (UDHR, 1948), where Article 1 famously proclaims: “All human beings are born free and equal in dignity and rights.” The notion of dignity is reiterated in key binding instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966. These documents, taken together with the UDHR, form the International Bill of Human Rights. While dignity is not always framed as a separate, enforceable right, it operates as an interpretive cornerstone for understanding other rights, particularly the rights to life, health, food, shelter, and non-discrimination.

Subsequent instruments, including the Convention on the Rights of the Child (1989), the Convention on the Rights of Persons with Disabilities (CRPD, 2006), and regional human rights treaties, such as the American Convention on Human Rights and the African Charter on Human and Peoples' Rights, reaffirm dignity as either a legal right or an essential value of human identity and autonomy. Crucially, human dignity is increasingly cited in emerging areas of international law, such as climate change, bioethics, and migration, suggesting its evolving nature as a guiding principle beyond traditional civil and political contexts (Nino, 2023).

2.2. Human dignity in EU Law and the ECHR system

In the European Union, human dignity enjoys a particularly elevated status. Article 1 of the Charter of Fundamental Rights of the European Union (CFREU) states unequivocally: "Human dignity is inviolable. It must be respected and protected." This formulation assigns both intrinsic and instrumental value to dignity, it is to be respected (as an inherent quality) and protected (through legal action and policy). Since the Lisbon Treaty came into force in 2009, the Charter has acquired binding legal effect, making dignity enforceable before the Court of Justice of the European Union (CJEU) in areas within the scope of EU law. The CJEU has referenced dignity in judgments concerning bioethics, reproductive rights, asylum, social welfare, and anti-discrimination. For instance, in the Test-Achats case (C-236/09), the Court struck down insurance premium differentials based on gender, citing the equality and dignity of individuals. In parallel, the European Court of Human Rights (ECtHR), operating under the European Convention on Human Rights (ECHR), has developed a robust, if somewhat implicit, jurisprudence on dignity. Although the Convention does not contain a stand-alone provision on dignity, the Court has interpreted Articles 2 (right to life), 3 (prohibition of torture), and 8 (private life) in light of human dignity. Notable cases such as Pretty v. the United Kingdom (2002), M.S.S. v. Belgium and Greece (2011), and Paposhvili v. Belgium (2016) underscore the centrality of dignity in matters ranging from detention conditions to end-of-life decisions and healthcare access.

3. Human Dignity and Sustainable Development: Normative and Functional Convergence

3.1. The 2030 agenda and its human-centred vision

The adoption of the 2030 Agenda for Sustainable Development by the United Nations General Assembly in 2015 marks a watershed moment in global governance. The Agenda explicitly states that it is "determined to end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment." This vision reflects a shift away from purely economic metrics of development (such as GDP) toward a more holistic, people-centred paradigm. The Sustainable Development Goals (SDGs) reinforce this shift by addressing environmental sustainability (SDG 13: Climate Action), social justice (SDG 10: Reduced Inequalities), economic opportunity (SDG 8: Decent Work), and institutional reform (SDG 16: Peace, Justice and Strong Institutions). Human dignity is not confined to a single SDG; it permeates the entire framework as an underlying ethical and legal rationale.

3.2. Legal dimensions of human rights-based approaches

Sustainable development, as framed by the Agenda 2030, is increasingly implemented through Human Rights-Based Approaches (HRBAs). These approaches require that all development efforts be anchored in the normative framework of international human rights law, including the principles of universality, indivisibility, accountability, participation, and non-discrimination, all of which are intimately connected to dignity. In legal practice, HRBAs guide the design, implementation, and evaluation of policies and programmes, especially those concerning environment, health, education, and livelihoods. Courts and institutions using HRBAs are more likely to assess whether development policies ensure that individuals and communities live in conditions that respect their dignity, and whether states meet their positive obligations to protect such conditions.

3.3. Dignity as a measure of sustainability

In recent legal and academic discourse, dignity has emerged not only as a moral reference but as a functional legal tool for evaluating sustainability. It provides an evaluative criterion for:

a. Whether sustainability strategies are inclusive;
b. Whether the burdens of ecological transition are fairly distributed;
c. Whether future generations' rights are considered;
d. Whether essential needs are met without discrimination.

This reconceptualization helps reconcile human rights and environmental protection, historically seen as separate domains (Poto, 2021).

4. The Role of Dignity in Protecting Vulnerable Groups

4.1. Disproportionate vulnerabilities and legal gaps

Environmental harm and unsustainable development disproportionately impact vulnerable populations, including indigenous peoples, migrants, children, women, the elderly, and persons with disabilities. These communities are often excluded from decision-making processes, lack legal remedies, and suffer from cumulative injustices that undermine their dignity (Sen, 1999). Climate change intensifies this problem by creating new categories of vulnerability, such as climate-displaced persons who are not formally recognized as refugees under existing international law. The absence of a specific legal status for such individuals exposes a gap in the protective framework of human rights and humanitarian law.

4.2. Climate Displacement and Emerging Case Law

One of the first major legal recognitions of this gap occurred in Teitiota v. New Zealand (2020), where the UN Human Rights Committee acknowledged that environmental degradation could constitute a violation of the right to life and dignity under Article 6 of the ICCPR. Although the Committee did not find a breach in this case, it laid the groundwork for future claims. Regional courts and UN bodies are now more receptive to arguments that climate-related displacement, food insecurity, and loss of land constitute violations of dignity-based rights, particularly when states fail to act with due diligence or disproportionately burden certain populations.

4.3. Equitable access to basic services

In a dignity-centred legal framework, access to water, sanitation, energy, healthcare, and education is not merely a matter of policy discretion, it becomes a legal entitlement. Courts in Colombia, India, and South Africa have issued landmark rulings recognizing the essential role of these services in enabling individuals to live with dignity. By recognizing the interdependence of environmental and social rights, legal systems can institutionalize mechanisms to prioritize the needs of the most marginalized, thereby transforming sustainability from a generic objective into a justice-based strategy.

5. Case Law and Institutional Practices: From Theory to Enforcement

5.1. Strategic climate litigation and dignity

Courts around the world are increasingly engaging in strategic climate litigation that frames state inaction as a violation of dignity-related rights.

I. In Urgenda Foundation v. Netherlands (2019), the Dutch Supreme Court ruled that the government's failure to adequately reduce greenhouse gas emissions violated the right to life and well-being under the ECHR, emphasizing the dignity of citizens, especially future generations.

II. In KlimaSeniorinnen v. Switzerland (2024), the ECtHR sided with elderly women who argued that inadequate climate action by the Swiss government violated their rights to private and family life, physical integrity, and dignity. These cases mark a shift from environmental protection as a policy goal to a matter of legal obligation, enforceable through human rights courts.

5.2. Institutional models: EU Green Deal and beyond

The European Green Deal, launched by the European Commission in 2019, explicitly aims to make the EU climate-neutral by 2050 while ensuring that the transition is "just and inclusive." The Just Transition Mechanism, part of this strategy, is designed to assist regions and workers most affected by the shift away from carbon-intensive industries.

Similarly, the Farm to Fork Strategy emphasizes sustainable food systems while prioritizing public health, animal welfare, and environmental integrity, all framed around the dignity and rights of both consumers and producers.

6. Critical Reflections and Legal Challenges

6.1. Risks of symbolic use

Despite its centrality, human dignity often remains conceptually vague or rhetorically inflated. When not grounded in enforceable legal frameworks, dignity risks becoming a symbolic reference devoid of practical significance.

6.2. Fragmented protection

Dignity is protected in multiple legal instruments but lacks universal codification as a standalone, enforceable right. This fragmentation limits its justiciability and weakens its impact in transnational litigation, especially in environmental and climate-related cases.

6.3. Need for legal innovation

A forward-looking sustainability agenda must develop new legal instruments and standards that give concrete form to dignity. This includes:

i. Expanding justiciable rights linked to climate, water, and food;
ii. Enhancing procedural safeguards for vulnerable communities;
iii. Recognizing the rights of future generations and nature.

7. Conclusions

This paper has demonstrated that human dignity and sustainable development are not only compatible but mutually reinforcing concepts. By embedding dignity in the legal architecture of sustainability, lawmakers, courts, and institutions can ensure that ecological transition aligns with human rights, justice, and inclusion.

To achieve this, it is necessary to move beyond symbolic affirmations and toward legally enforceable frameworks that protect both current and future generations. The integration of dignity into legal norms, policies, and institutional practices is essential for achieving sustainability that is not only resilient but truly human-centred.

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AN INTERNATIONAL LAW APPROACH TO CLIMATE JUSTICE: HUMAN DIGNITY AND THE RIGHTS OF FUTURE GENERATIONS

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Abstract: *Climate justice today represents a high-level legal, ontological and axiological alarm signal, situated on the threshold between the present and the future, between existing rights and responsibility towards future generations. International law, responsible for the intersection of human rights, environmental law and sustainable development, must, in many situations, abandon the reactive paradigm and adopt the ethics of anticipation. Human dignity is the foundation of any climate regulation, implicitly extending to those who are unborn. The study re-examines the international legal regime, and argues for the reconceptualisation of state and non-state responsibility.*

Key words: *Climate justice, Human dignity, Anticipatory ethics, International law, Intergenerational responsibility.*

1. Introduction

Climate justice is today at the centre of attention, perhaps more than ever before, by virtue of its status not only as an ecological or economic concern, but as a fundamental legal, ontological and axiological challenge. It constitutes a frontier zone between the present and the future, between existing rights and legal responsibility for that which is not yet fully realised – namely, future generations. From this perspective, contemporary international law, especially in its intersection with human rights, environmental law, and the law of sustainable development, is called upon to transcend the reactive paradigm and to embrace an ethics of anticipation, as envisioned by Hans Jonas in Das Prinzip Verantwortung (1979).

Human dignity, in its Kantian conception but also in the evolved sense within post-war international legal doctrine (see Article 1 of the Universal Declaration of Human Rights, 1948), must be recognised as the foundational axis of any climate regulatory endeavour. It is not confined to the present condition but implicitly projects itself towards the guarantee of a dignified life for the unborn. In this sense, international courts (such as the European Court of Human Rights in KlimaSeniorinnen v. Switzerland, 2024) are

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beginning to develop a jurisprudence that intricately links present-day rights with future climate impacts.

This paper brings into focus a reassessment of international legal structures concerning climate, from the Paris Agreement (2015) and the proposed Global Pact for the Environment (2017), to recent initiatives within the UN General Assembly regarding the recognition of a 'right to a healthy environment' (Resolution 76/300, 2022). At the heart of this analysis lies the necessity of reconceptualising both state and non-state legal responsibility, in order to establish a positive obligation to protect future human dignity. The contribution adopts a theoretical perspective, drawing inspiration from Martha Nussbaum's vision of the capability to live in relation with nature, and from Edith Brown Weiss's transgenerational interpretation of justice.

1.1. Objectives, Material and Methods

Methodologically, a doctrinal and comparative analysis of relevant instruments and jurisprudence (Paris Agreement, UN resolutions, ECtHR) was employed, integrated with philosophical grounding (Jonas, Nussbaum, Brown Weiss) and a systemic-teleological interpretation of legal norms.

This paper seeks to bring to the forefront a critical reassessment of international legal mechanisms on climate from the perspective of the human dignity of future generations. It examines recent normative developments, from the Paris Agreement (2015) and the Global Pact for the Environment initiative (2017) to the United Nations General Assembly's recent recognition of the right to a healthy environment (Resolution 76/300 of 2022). At the core of the analysis lies the need to broaden the concept of legal responsibility – both for state and non-state actors – towards the establishment of a positive obligation to protect future human dignity through ambitious climate action in the present. The approach is theoretical-doctrinal and interdisciplinary, combining international law with elements of moral philosophy. It draws inspiration from Martha Nussbaum's vision of the human capability to live in relationship with nature as part of human flourishing, as well as from Edith Brown Weiss's transgenerational interpretation of justice, which conceptualises the rights of future generations in legal terms.

The structure of the paper begins with a section clarifying the philosophical and legal foundations of the principle of human dignity in relation to climate justice, followed by a discussion of the concept of intergenerational equity in international environmental and sustainable development law, an analysis of the evolution of international human rights law towards the recognition of a right to a healthy environment and the corresponding obligations. The penultimate chapter dissects the issue of liability for both states and non-state actors (such as companies). Finally, the conclusions synthesise the arguments.

2. Discussion and Findings

2.1. An International Law Approach to Climate Justice – Human Dignity and the Rights of Future Generations

Climate justice has clearly moved to the centre of global attention, representing far

more than a merely ecological or economic issue: its characteristics announce it as a fundamental legal, ontological and axiological problem (Schapper et al., 2025, p. 2). The reason is that it draws a critical demarcation between present and future, between the existing rights of the current generation and the legal responsibility towards what is not yet fully realised, namely future generations. The stakes of climate justice lie in establishing a fair balance between the needs and rights of those living today and those of the not-yet-born, in the context of an unprecedented climate threat. This perspective compels international law – particularly at the confluence of human rights law, environmental law and sustainable development law – to transcend the traditional reactive paradigm and to embrace an ethics of anticipation, as Hans Jonas foreshadowed in his famous work Das Prinzip Verantwortung (1979). Jonas argued that technological progress has enormously extended the scope of human actions, generating global and potentially irreversible effects, which is why moral norms (and, by extension, legal norms) must be adapted to prevent future catastrophes. His well-known and categorical imperative for the technological age stipulates: 'Act so that the effects of your action are compatible with the permanence of genuine human life' (Jonas, 1979, Chapter 1/V). This has become a postulate formulated as a duty not to act destructively towards future generations and the totality of the conditions of their lives. The ethics of responsibility towards the future thus requires a redesign of the current legal framework so that we move from post-factum reparation of damage to its proactive prevention in the name of those yet to come.

Article 1 of the Universal Declaration of Human Rights (1948) explicitly proclaims that 'all human beings are born free and equal in dignity and rights'. This inherent dignity is not a static concept limited to the present; on the contrary, it is implicitly projected into the future, which means guaranteeing a dignified life for those not yet born. Extending further out of respect for all forms of life, the concept naturally encompasses their benefit as well (Popa Tache, 2022, pp. 14–25). Climate change, however, calls into question the very possibility of a dignified life for future generations, given the risk of bequeathing them a severely degraded environment marked by disasters, food insecurity and loss of biodiversity. Consequently, the respect for human dignity obliges states and the international community to protect current human rights and to anticipate and prevent future violations of these rights caused by the climate crisis.

Recent developments confirm that international judicial bodies are beginning to recognise the intrinsic link between present rights and future climate impacts. A pertinent example for this analysis is the historic judgment delivered by the Grand Chamber of the European Court of Human Rights (ECtHR) on 9 April 2024 in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland. In this case, the Court held that climate change constitutes one of the most pressing issues of our time and represents a threat to human rights. At the same time, it confirmed that states have a positive obligation to adopt concrete measures to mitigate climate change under Article 8 of the European Convention on Human Rights (the right to respect for private and family life). On that occasion, the Court found that Switzerland had breached this obligation by failing to meet its own greenhouse gas emission reduction targets and by leaving critical gaps in its regulatory climate framework. It also found a violation of the right of access

to justice (Article 6 ECHR) due to the lack of responsiveness of national courts to the applicants' claims. Jurisprudence from other international and national courts – from UN committees to constitutional courts – likewise moves towards recognising present responsibility for future climate harm, signalling a paradigmatic shift in the way intergenerational justice is conceived.

2.2. Human Dignity as the Foundation of Climate Justice

Human dignity represents the primordial starting point for constructing any normative endeavour in the field of climate justice. In Kantian philosophy, dignity (*Würde*) belongs to every human being by virtue of their reason and moral freedom, which grants them the status of an end in themselves, never to be treated merely as a means (Brassington, 2006). Kant emphasised that everything that has a price can be replaced with an equivalent, whereas that which is beyond price – namely, the dignity of the person – has no equivalent and commands absolute respect (Kant, 1996, 4:434 – 435/pp. 84–85). This idea, taken up and secularised in modern legal doctrine, was inscribed in the foundational documents adopted after 1945. The *Universal Declaration of Human Rights* affirms, as shown above, the equality in dignity of all human beings from birth, thereby consecrating dignity as the source of all inalienable rights.

In the face of the climate crisis, human dignity acquires heightened and complex relevance. Climate change threatens the vital elements of a dignified life: access to clean water, food, shelter, a safe and healthy environment, as well as the protection of life and health. Unchecked global warming risks generating situations of indignity on a global scale: entire communities forcibly displaced by rising sea levels or desertification, populations deprived of subsistence means, and intensified natural disasters that endanger human life and physical integrity. Such consequences would seriously undermine the fundamental premise that every human being has the right to 'a standard of living adequate for the health and well-being of himself and of his family' (as stipulated in Article 25 of the UDHR) within an environment that allows them to live in dignity.

Dignity is not limited to human beings existing in the present. If we accept, as suggested both by moral reason and by visionary legal instruments, that every member of the human species – including those not yet born – possesses inherent value, then it becomes a moral and legal imperative to act in ways that do not compromise the dignity of these future people through our present actions (or inactions) (Dafermos, 2025). In this regard, the famous *Stockholm Declaration on the Human Environment* (1972) articulated, five decades ago, a direct link between environment and dignity, proclaiming in Principle 1 that 'man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.' The same principle also underlines that humanity bears a solemn responsibility to protect and improve the environment for present and future generations. Thus, from the very beginnings of international environmental law, human dignity has been recognised as providing both a right to a life-conducive environment and a responsibility towards the future.

The connection between dignity and climate justice can also be examined through the lens of the concept of the 'good life' (*vivir bien*) or 'flourishing' (in the Aristotelian sense), developed in contemporary capability theories. Philosopher Martha Nussbaum, within the capabilities approach, explicitly includes among the essential components of a dignified human life the capability to live in a harmonious relationship with nature. In her list of central human capabilities, Nussbaum lists at point 8 'Other Species', defined as the ability 'to be able to live with concern for and in relation to animals, plants, and the world of nature' (Nussbaum, 2006, pp. 41–42). Respect for human dignity therefore includes ensuring the environmental conditions in which human beings can realise themselves in relation to nature.

The present generation, as the beneficiary of inherent dignity, has an obligation to treat future generations not as expendable means for immediate interests, but as ends in themselves, worthy of an environment conducive to life. This intergenerational obligation to respect human dignity manifests itself, in legal terms, through the necessity of recognising rights in favour of future generations (at least in collective form) and corresponding obligations for present actors.

2.3. Future Generations and Intergenerational Equity in International Environmental Law and Sustainable Development

The issue of intergenerational equity has become increasingly visible in international legal discourse alongside the evolution of concerns regarding sustainable development and the protection of the global environment. The concept of intergenerational equity starts from the premise that all past, present and future generations hold the Earth in common, and that the present generation acts both as a beneficiary of the heritage received from its ancestors and as a trustee charged with transmitting this heritage, in good condition, to the generations that will follow (Spijkers, 2018). The principle was influentially articulated by the American jurist Edith Brown Weiss, who, in the 1980s, developed a theory of intergenerational equity applied to environmental law. The principle of intergenerational equity, as proposed by Brown Weiss, goes beyond mere political rhetoric and seeks incorporation into the legal mechanism. One innovative idea was to recognise intergenerational rights – namely, rights belonging to generations as a group (not necessarily to unborn individuals but to future generational collectivities) – which correspond to the obligations of the present generation.

Although the notion of rights of future generations raises philosophical and legal in fact, international law already recognises other collective rights, such as the right of peoples to self-determination, so extending this logic to the group of future generations is not entirely alien to the legal order. Naturally, counterarguments persist, ranging from uncertainty about future needs – since we do not know exactly what future generations will desire or prioritise – to the dilemma that future people depend on our actions in the sense that they cannot claim a better quality of life without our having ensured their very existence. Paradoxically, then, they might be seen as owing us gratitude rather than blame. Another criticism of Brown Weiss's theory is its anthropocentric character: it places the relationship between generations at the centre of attention but does not

explicitly address the intrinsic value of nature. Some authors have suggested that the duty not to destroy the Earth could also be viewed as a direct obligation towards nature itself, and not only towards other human beings (Spijkers, 2018). Brown Weiss has partly responded to this critique by stressing that our relationship with nature is an integral part of intergenerational equity, since the degradation of nature affects future generations. Conceptually, however, this relationship with nature can also be seen as transcending the strict framework of equity between generations, reflecting an ecocentric rather than a purely anthropocentric perspective (Collins, 2007, p. 79).

Over time, elements of the principle of intergenerational equity have gradually been incorporated into key international documents. The Rio Declaration on Environment and Development (1992) states in Principle 3 that 'the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.' This formulation enshrines the idea of solidarity between generations as part of the concept of sustainable development. The classic definition of sustainable development in the Brundtland Report (World Commission on Environment and Development, 1987) is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.' This has become a motto of global policies and is implicitly reflected in the Paris Agreement and the Sustainable Development Goals (SDGs). In the preamble to the 2015 Paris Agreement, the term *intergenerational equity* is explicitly mentioned as a principle that Parties should respect in their climate actions.

In this context, the initiative for a Global Pact for the Environment, launched in 2017 by a group of experts and supported by France, should be recalled. It aimed to codify within a single instrument the main principles of environmental law. The draft Pact – although not formally adopted to date but generating significant discussion – included an article dedicated to intergenerational equity. Article 4 of the draft stipulated that intergenerational equity should guide decisions that may have an impact on the environment, obliging states to take measures to ensure that their present actions do not compromise the ability of future generations to meet their own needs. Even though the Global Pact remains at the proposal stage, the UN General Assembly adopted Resolution 72/277 in 2018, which launched discussions on gaps in international environmental law and possible avenues for strengthening it, implicitly recognising the need for a more coherent approach to principles, including those concerning future generations.

Beyond instruments of varying legal force, the international community has also adopted solemn declarations concerning responsibility towards the future. UNESCO's *Declaration on the Responsibilities of the Present Generations Towards Future Generations* (adopted on 12 November 1997) is emblematic in this regard. It clearly states that 'the present generations have the responsibility of ensuring that the needs and interests of present and future generations are fully safeguarded,' and of transmitting to future generations a planet not irreversibly damaged by human activity. Interestingly, in Article 3, the UNESCO text explicitly links the perpetuation of the human species to respect for human dignity, stating that the present generations must ensure the maintenance and perpetuation of humanity 'with due respect for the dignity of the

human being,' so that nature and form of human life are not undermined in any way. Through such formulations, it is effectively recognised that environmental protection and consideration of the future are closely linked to the safeguarding of human dignity as a perennial value.

The principle of intergenerational equity has thus gradually entered international legal consciousness, evolving from general policy declarations to treaties and emerging jurisprudence. Sustainable development law has enshrined the concept as a defining element, while international environmental law and human rights law are beginning to operationalise it. Practically speaking, however, the question remains: how can the rights and interests of those who are not yet born be effectively protected?

2.4. State and Non-State Actors' Responsibility in the Context of Climate Justice

Traditionally, public international law places the state at the centre of the responsibility regime, where states are the primary subjects obliged to prevent and remedy harm, including environmental damage. However, the global and diffuse character of climate change, as well as the massive involvement of private actors – particularly oil and fossil fuel corporations – in generating emissions, has led to an expansion of the concept of responsibility. We are witnessing the emergence of a pluralistic vision of legal responsibility, in which both states and non-state entities bear obligations, whether legal or moral, towards the protection of the climate and, implicitly, towards future generations.

2.4.1. *States' Obligations: From No Harm to Positive and Erga Omnes Obligations*

In classical international environmental law, the principal obligation of states was to prevent significant transboundary environmental harm to other states or to the global commons, i.e. the *no harm* principle, crystallised in the 1941 *Trail Smelter* arbitration and reiterated in Principle 21 of the 1972 Stockholm Declaration. Climate change, however, raises the issue of responsibility even when the harm is not yet actual but future and global. A state's actions or omissions have the potential to contribute to a diffuse, collective harm (global warming) that will materialise fully only years or decades later and will affect the entire international community.

Consequently, legal discourse has evolved towards recognising climate change as a *common concern of humankind*, as set out in the 1992 United Nations Framework Convention on Climate Change (UNFCCC). This status indicates that all states have a legal interest in protecting the climate and, therefore, that climate obligations have acquired an *erga omnes* character – owed to the international community as a whole. An example is the resolution through which the United Nations General Assembly requested an advisory opinion from the International Court of Justice (ICJ) in 2023, describing climate change as an unprecedented challenge of civilisational proportions, affecting the well-being of present and future generations (United Nations General Assembly, 2023), thereby underscoring the *erga omnes* nature of the obligation to combat this threat.

In 2025, the International Court of Justice issued a historic advisory opinion on states'

obligations with respect to climate change, establishing that international law imposes on states both obligations to prevent and reduce greenhouse gas emissions and responsibilities towards future generations, thereby strengthening the principles of intergenerational equity and *no harm* in the climate context.

2.4.2. *The Responsibility of Corporations and other Private Actors*

This paper has demonstrated that the climate crisis cannot be separated from the contribution of major industrial companies, particularly those in the fossil fuel sector. Recent studies show that a relatively small number of companies – the so-called 'carbon majors' – are responsible for a significant proportion of historical CO_2 emissions. This has raised the question: can private actors be held accountable for climate change? Although classical international law does not directly regulate corporate obligations, there are significant trends in domestic law and soft law initiatives that impose standards of corporate conduct in relation to the environment and human rights.

An important path was opened by national courts in *Milieudefensie (Friends of the Earth Netherlands) v. Royal Dutch Shell* (2021), where the Hague District Court ruled that the oil giant Shell is obliged to reduce its carbon emissions from its operations and products by 45% by 2030 compared to 2019 levels, in line with the objectives of the Paris Agreement.

In recent years, there has been intense debate about the proposal to introduce *ecocide* – that is, severe environmental destruction – as an international crime, so that state and corporate leaders and decision-makers could be held accountable before the International Criminal Court for actions or omissions causing severe and long-term harm to the global environment.

Finally, the potential role of international organisations and subnational entities such as cities and regions in climate justice deserves mention. International financial organisations, such as development banks, are adjusting their policies to avoid financing highly polluting projects, thus responding to an institutional responsibility towards climate goals. Cities, which are on the front line of climate impacts, cooperate in global networks and adopt commitments that sometimes surpass those of their own states, thereby assuming a form of direct public responsibility towards their citizens.

3. Conclusions

An ethics of anticipation in law would concretely mean the systematic integration of long-term impact into all major legal decisions. Parliaments could establish special mechanisms such as a guardian or advocate for future generations – an Ombudsman for the Future – already experimented with in countries like Hungary in the past, to ensure that legislation is not short-sighted when it comes to long-term interests.

At the *Summit of the Future*, held in New York on 18–19 September 2024, UN Member States negotiated and adopted the *Pact for the Future* in the form of a United Nations General Assembly resolution – A/RES/78/1, adopted by consensus on 20 September 2024. Although it is soft law, it acts as an incubator for future hard law developments.

The role of education and public awareness should not be overlooked as part of this

legal ethic, for the law also has an expressive and pedagogical function. By recognising future dignity and the rights of the environment, it is meant to educate society in the spirit of responsibility. Practitioners, theorists, and educators have a duty to promote this anticipatory vision and to incorporate into contemporary legal thinking an assessment of the impact on those who cannot be present in the courtroom today but will feel the consequences tomorrow.

Climate change now places international law before one of the greatest challenges in its history: that of expanding its vision and effectiveness beyond the urgencies of the present towards the protection of humanity's common future. This analysis has highlighted that this paradigmatic adaptation is already unfolding on multiple fronts. An innovative aspect brought to light is the broadening of the spectrum of responsibility to include non-state actors.

Only through such mobilisation will we be able, metaphorically speaking, to look future generations in the eye and tell them that we have preserved for them what they too, in turn, have the fundamental right to possess and to pass on: a world in which they can live free and equal in dignity and rights, in harmony with the entire planet.

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THE PRINCIPLE OF DIGNITY IN THE NEW CONVENTION FOR THE PROTECTION OF THE PROFESSION OF LAWYER

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Abstract: *The adoption of the European Convention for the Protection of the Profession of Lawyer by the Council of Europe marks a significant moment in the consolidation of international guarantees for lawyers. This article aims to analyze how the principle of the dignity of the profession of lawyer is reflected in the content of this Convention. Starting from the theoretical foundations of the notion of professional dignity and comparatively analyzing previous international provisions, but also those of Romanian law, the study highlights how the new Convention transforms dignity from an ethical norm into a binding legal standard for signatory states.*

Key words: *Convention, protection, lawyers, principle of dignity*

1. Introduction

The adoption of the European Convention for the Protection of the Profession of Lawyer by the Council of Europe on 12 of March 2025 marks a significant moment in the consolidation of international guarantees for lawyers.

This article aims to analyze how the principle of the dignity of the profession of lawyer is reflected in the content of this Convention. Starting from the theoretical foundations of the notion of professional dignity and comparatively analyzing previous international provisions (CCBE Charter, UN Basic Principles on the Role of Lawyers), but also those of Romanian law, the study highlights how the new Convention transforms dignity from an ethical norm into a binding legal standard for signatory states.

The article analyzes the key provisions of the Convention – in particular Articles 2 and 5 – which establish clear obligations for state parties to respect the dignity of the lawyer and to protect him against any forms of harassment, intimidation, unjustified interference or discredit campaigns.

The conclusion supported is that this convention has the potential to become an instrument for strengthening the legal profession in Europe, and the state of dignity, as protected by the new legal framework, becomes a benchmark not only for lawyers, but also for the quality of the act of justice in a democratic state.

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2. General Remarks on The European Convention for the Protection of the Profession of Lawyer

The idea of a European Convention for the Protection of the Profession of Lawyer was launched back in 2016 (Savu, 2021, p. 127), but even after almost 10 years, it has yet not been ratified. However, it is remarkable how, immediately after its adoption, it was signed by an impressive number of states, including not only EU Member States, but also other states such as the United Kingdom, the Republic of Moldova, Norway, North Macedonia, Liechtenstein or Iceland.

Adopted under the auspices of the Council of Europe on 12 of March 2025 and signed by Romania on 21st October 2025, after being already signed by 19 other states, the Convention for the Protection of the Profession of Lawyer, known as the Luxembourg Convention aims to become a global standard in the defense of the legal profession, conveying the message that protecting lawyers is an act of democratic responsibility necessary in any state governed by the rule of law.

The Convention is based on the idea that lawyers are key players in the rule of law, and their work helps protect the human dignity of those involved in legal proceedings. In this way, the Convention confers inherent professional dignity on the profession, imposing on states the obligation to prevent any form of discrediting, intimidation, denigration, or degrading treatment of lawyers in the exercise of their functions.

The Convention establishes, for the first time, a set of clear legal guarantees for the exercise of the *Profession of Lawyer*: the protection of the confidentiality of the lawyer-client relationship, the prohibition of any form of intimidation, threat, or abusive pursuit of lawyers, and protection against arbitrary interference by the authorities.

No other profession has ever benefited from an international convention adopted by the Council of Europe specifically dedicated to its protection and institutional defense. This is the first time that a profession as such has been granted exclusive guarantees through a binding instrument, being thus an extraordinary recognition of the role that the lawyer plays in nowadays society.

In this respect, given the trust placed in them by society, primarily by clients, but also by third parties, courts, and the state, lawyers must meet the highest standards of moral integrity, subsumed under the concept of professional dignity.

3. The Principle of Professional Dignity of a Lawyer

Dignity means the quality, state or condition of being noble (Black ‘s Law Dictionary, p. 572) and for someone interested it means the quality, state or condition of being dignified in order to obtain and retain the elevated civil title of a qualified professional - The Lawyer. This state involves a set of moral, behavioural and social qualities that make a person fit to exercise the Profession of Lawyer. These requirements are necessary because lawyers are key actors of justice, enjoy public trust, have access to confidential information, represent litigants in sensitive situations and their behaviours can affect the credibility of the entire system. Therefore, the professional body imposes high ethical standards prior to admission to the profession, standards that lawyers must

maintain throughout their careers. Dignity appears as a mandatory ethical filter.

From another perspective, dignity is a fundamental right of lawyers, which imposes a corresponding obligation on the state to protect them against attacks, denigration, and intimidation.

3.1. The Principle of professional dignity according to UN basic principles

The UN Basic Principles on the Role of Lawyers (1990) state that lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice (article 12) and governments, professional associations of lawyers and educational institutions shall ensure that lawyers receive appropriate education and training and are made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law (article 9).

Onward, in protecting the rights of their clients and in promoting the cause of justice, lawyers shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession and shall always loyally respect the interests of their clients (articles 14 and 15).

3.2. The Principle of professional dignity according to the CCBE Charter of core principles (2019)

According to the CCBE Charter of Core Principles of the European legal profession (2019), the dignity and honor of the legal profession and also the integrity and good repute of the individual lawyer, represent one of the core principles.

Thus, in order to be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership in an honorable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonor the profession. Disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession.

3.3. The Principle of professional dignity according to Romanian Law

In Romanian Law, the principle of dignity of the legal profession is enshrined in Article 227 of the Statute of the Profession of Lawyer and refers primarily to the essential condition for entering the legal profession, which is to be worthy of practicing this profession. According to the law, being worthy of practicing the legal profession means meeting the minimum standard of moral integrity that can be proven by a person who wishes to enter the profession.

De lege lata, the cases of unworthiness are provided by article 14 of Law 51/1995 for the organization and practice of the lawyer 's profession. The first case of unworthiness is that of a final court conviction to a prison sentence of one year or more for the intentional commission of a crime against life, against property, against the administration of justice, corruption or service, forgery, which affects relations concerning social coexistence, against national security or a crime of genocide, against humanity and war, and which is punishable by imprisonment with a special minimum of at least one year. In this category, in order for a case of unworthiness to exist, four conditions must be cumulatively met: (i) the existence of a final conviction for committing one of the crimes listed by law that carry a minimum sentence of at least one year; (ii) the crime must have been committed intentionally; (iii) the conviction must provide for a minimum prison sentence of one year; and (iv) there must have been no rehabilitation, post-conviction amnesty, or decriminalization of the act at the time of the verification of unworthiness. The second situation of unworthiness consists in committing abuses that violate fundamental human rights and freedoms, established by court decision or committing serious disciplinary offenses punishable by the exclusion from the profession. We note that exclusion from the profession is a disciplinary sanction that may be imposed by the disciplinary bodies within the legal profession. The third situation of unworthiness subsists for the duration established by a court or disciplinary decision for which the prohibition to practice the profession of lawyer was applied, as a complementary punishment under the conditions of the Criminal Code (prohibition of the right to practice the profession used to commit the offense), respectively as a disciplinary sanction. The last case of unworthiness is that in which a final court decision or acts of the professional bodies of the legal profession have established that a person has exercised or supported, in any form, the unlawful practice of the legal profession.

Cases of unworthiness are verified both upon entry into the profession and upon re-registration after suspension, as well as throughout the entire period of practice, in this way the Bar Associations and the U.N.B.R. ensuring the protection of the dignity and honour of member lawyers. According to the relevant legal provisions, anyone who falls into one of the four categories of unworthiness provided for by law is unworthy of being a lawyer.

Taking the oath upon admission to the bar represents a promise to uphold the common professional creed and a personal guarantee of the professional dignity of each lawyer.

The trust placed in lawyers is essential to the profession. If the legal profession enjoys prestige and a reputation assured by the dignity of the profession, it is incumbent upon each lawyer to maintain their dignity and moral integrity, which is why the rules of professional conduct recognize the existence of the principles of dignity, honour, and integrity that govern the conduct of lawyers in the exercise of their profession, but also outside it (Article 13 of the Code of Professional Conduct for Romanian Lawyers).

Based on the principle of dignity, honour, and integrity enshrined in the rules of professional conduct, lawyers must refrain from conduct that could compromise their reputation, the reputation of the profession, and public confidence in the legal profession. Lawyers' responsibility for promoting these standards includes both their conduct in the exercise of their profession and outside it. Thus, dignity is required in any

public communication or advertising by a lawyer or any form of professional practice and any statements contrary to the dignity of individuals, the profession, or justice are prohibited. In particular, the statutory provisions urge lawyers to plead with dignity with the prohibition from using expressions that could offend the court and the participants in the proceedings, both in and outside the courtroom (Article 229 align. 3).

4. The principle of Dignity in the Convention for the Protection of the Profession of Lawyer

Dignity is a cross-cutting principle of the Convention on the Protection of the Legal Profession. It is reflected in the protection of the physical and moral integrity of lawyers, in the prohibition of intimidation, denigration, and interference with their activities, in the guarantees of professional freedom and independence, in the protection of professional secrecy or in the obligation of authorities to treat lawyers with respect, in procedural and detention guarantees or in the application of ECHR standards on respect for human dignity. The guarantees prescribed by the Convention are closely linked to the dignity of the lawyer – a professional exposed to humiliation, unjustified suspicion or pressure cannot exercise their role with integrity, independence and firmness.

From the perspective of the state of dignity, article 5 of the Convention named *Entitlement to practice* stipulates that the parties shall ensure that admission, continued authorization and readmission to practice as a lawyer are prescribed by law and they are based on objective, relevant and transparent criteria that are applied through a fair process, without being subject to discrimination on any ground prohibited by the case law of the European Court of Human Rights. Article 5 also prescribes that the parties shall ensure that decisions concerning admission, continued authorisation and readmission to practise as a lawyer are taken by a professional association or other independent body and are subject to challenge before an independent and impartial court or tribunal established by law.

In the same vein, article 8 of the Convention, entitled Discipline provides that parties shall ensure that the grounds for disciplinary action against lawyers are based exclusively on professional standards of conduct which are prescribed by law and are themselves consistent with the rights and freedoms enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms. The disciplinary proceedings against lawyers should be brought before an independent and impartial disciplinary committee established by a professional association, an independent and impartial authority or an independent and impartial court or tribunal, established by law and should be subject to challenge by the lawyer concerned before an independent and impartial court or tribunal, established by law. The disciplinary proceedings shall also be processed expeditiously and conducted consistently with the requirements for a fair trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and with the right to be advised, assisted or represented by a lawyer of their choice. Parties shall ensure that any disciplinary sanctions imposed on lawyers respect the principles of legality, non-discrimination and proportionality. Any prohibition on the right to practise should only be imposed for the most serious breaches of professional

standards. It is worth noting the emphasis placed by the text of the Convention in article 2, point 3. a), on the persons who, in violation of the above-mentioned articles, have been refused admission to, or have been revoked or suspended from the profession and to whom the same guarantees of the professional rights of lawyers recognized by the Convention apply.

In a nutshell, from both perspectives, the Convention makes the dignity of lawyers a binding legal requirement for the signatory parties.

5. Conclusions

The dignity of lawyers is not only an individual right, but also a systemic guarantee because an intimidated lawyer means a vulnerable litigant, a denigrated lawyer leads to a flawed trial and a lawyer treated without dignity is a failure of the rule of law. Therefore, the Convention protects the dignity of lawyers in order to protect the dignity of individuals before the law.

Thus, the European Convention on the Protection of Lawyers should be ratified without delay by all Member States and other interested parties in order to strengthen citizens' trust in the justice system and ensure respect for high standards of rights and freedoms.

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"PRINCIPLES OF HUMANITY": THE SIGNIFICANCE OF THE *MARTENS* CLAUSE FOR THE PROTECTION OF HUMAN DIGNITY IN MODERN WARFARE

Fulvia STAIANO[1]

Abstract: *This paper aims to test the capability of international humanitarian law (IHL) to adapt to the ever-changing features of contemporary warfare and ensure an effective protection of civilians in armed conflict, with a special focus on the so-called Martens clause. It argues that the Martens clause can serve as an interpretative lens of current IHL norms and principles regulating means and methods of warfare, fostering the protection of human dignity vis-à-vis the increasingly important role played by AI in military decision-making.*

Key words: *armed conflict; protection of civilians; Martens clause; artificial intelligence; prohibited weapons.*

1. Introduction

The rapid proliferation of new technologies is posing new challenges to the protection of civilians in armed conflicts. This is especially the case for the deployment of artificial intelligence (AI) systems as a tool to inform military decisions on targeting, or even on the material execution of an armed attack. While recourse to such systems is not *per se* unlawful, when characterized by a lack of effective human oversight it bears the risk of breaching principles of international humanitarian law (IHL) which are cornerstones of the protection of human dignity – such as the principles of precaution and distinction.

Against this background, this paper aims to test the capability of IHL norms to adapt to the ever-changing features of contemporary warfare and ensure an effective protection of civilians in armed conflict, with a special focus on the so-called Martens clause. According to a modern iteration of the clause, established under Article 1(2) of the Additional Protocol I to the 1949 Geneva Conventions, in cases not specifically covered by international treaty law, civilians and combatants alike «remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience».

This paper reflects on whether the Martens clause - defined by the ICJ in its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons* as "an effective means

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of addressing the rapid evolution of military technology" - can serve as an interpretative lens of current IHL norms and principles regulating means and methods of warfare, fostering the protection of human dignity *vis-à-vis* the increasingly important role played by AI in military decision-making.

2. International Humanitarian Law to the Test of Modern Warfare

In a recent Resolution on AI in the military domain and its implications for international peace and security (UNGA, 2024), the UN General Assembly recalled "the need for States to implement appropriate safeguards, including measures that relate to human judgment and control over the use of force, in order to ensure responsible application" of AI in this context. The Resolution also affirmed the applicability of IHL "throughout the life cycle of artificial intelligence capabilities as well as the systems they enable in the military domain". In a report issued pursuant to this Resolution, the UN Secretary-General raised concerns over reports of AI use in contemporary warfare, in particular in relation to human control and the facilitation of hostilities in densely populated areas and expressed the view whereby "machines that have the power and discretion to take human lives are (…) morally repugnant" (UN Secretary-General, 2024, para. 58).

While the Secretary-General did not mention specific instances of such use, recent reports of AI applications in armed conflicts include its use as a tool to accelerate the process of target identification, in combination with both traditional and new methods of warfare (Rickli and Mantellassi, 2024, pp. 18 – 20; Ford, 2024). Such systems, which gather and analyse large amounts of data with the aim to produce recommendations or predictions to human decision-makers, may be broadly defined as AI-based decision support systems (or AI-based DSS).

This specific application of AI in warfare raises several issues of compliance with IHL principles – chiefly, the principles of distinction, proportionality and precaution (Dorsey and Bo, 2025; Mauri, 2024). Some of these questions have been explored extensively in relation to autonomous weapons systems (AWS) (see for instance Kwik, 2024; Jain, 2023). However, the use of AI in the context of military targeting, coupled with recourse to traditional weapons to materially carry out attacks against recommended targets, raises some peculiar issues that must be addressed. In particular, because of their capability to operate entirely without human intervention, AWS prompt the question of whether a machine can (or even should, on which see Amoroso, 2023; Amoroso, 2025) make assessments that are essential to comply with the principles of distinction and proportionality – in addition to raising questions of accountability and attribution of conduct.

In relation to targeting through AI-based DSS, the contours of these problems are more nuanced. In theory, indeed, such a use of AI systems always entails human intervention in the form of oversight of the machine's recommendations, because the ultimate decision as to whether and how an armed attack should be carried out against a recommended target is entrusted to a human being. In practice, however, AI-based DSS can be used in a way that is incompatible with the abovementioned principles whenever human oversight is reduced to a minimum or even virtually absent. This may occur due to a number of factors, ranging from "automation bias" (i.e. to the tendency

of human operators to trust the assessment of an automated system) to a reckless or even malicious use of AI targeting systems in breach of IHL. In 2024, for instance, international media sources reported that a virtually acritical reliance by the Israeli military forces on an AI-based targeting system in the first stages of the ongoing Gaza war had led to the qualification of 37.000 Palestinians as possible targets for air strikes, causing thousands of casualties among civilians not participating in the hostilities (+972 Magazine, 2024; The Guardian, 2024).

Some States appear aware of the challenges posed by the use of AI in military targeting in relation to compliance with IHL, particularly in relation to the protection of civilians against an indiscriminate use of force and to the capability of AI to increase the lethality of conflicts (Secretary General, 2024, para. 21). In relation to the mitigation of such risks, the provisions of Additional Protocol I to the 1949 Geneva Conventions (Protocol I) on methods and means of warfare may assume a peculiar importance. In particular, Article 35(1) establishes that in any armed conflict the right of the belligerent Parties to choose methods or means of warfare is not unlimited. Article 36 complements this provision by envisaging a duty for all States Parties to determine whether the employment of any new weapon, means or method of warfare would, in some or all circumstances, be prohibited under Protocol I or any other international norm applicable to them (for a general overview of States Parties' duties under Article 36, see Daoust, Coupland & Ishoey 2002; Ronzitti 2010, p. 186; on the question of whether the content of Article 36 currently reflects customary law, see Jevglevskaja 2018, pp. 205–213).

Nevertheless, few States so far have argued that the weapons review mandated by Article 36 of Protocol I should encompass the use of AI in the military domain (Australia, 2025; Jordan, 2025; France, 2025; Austria, 2025). Whether and how this provision may be interpreted as enshrining a duty to review AI-based targeting in the light of IHL norms is yet to be determined, as are the exact criteria against which this assessment must be performed. In advocating the inclusion of AI-based DSS within the scope of the review prescribed by Article 36, the ICRC recommended ensuring the preservation of human control over "decisions that pose risks to the life, liberty and dignity of people affected by armed conflict" as essential for the respect of IHL norms (ICRC, 2025, p.3). In an earlier position paper, the ICRC had raised the question of the sufficiency or need for clarification of existing IHL norms in the light of technological advancements in warfare but had also noted that States' choices "must be within the bounds of existing rules and must take into account (…) broader considerations of «humanity» and «public conscience»".

As is well known, the ICRC's statement referred to two of the three prongs of the so-called Martens clause. In Protocol I, the Martens clause is included under Article 1(2), whereby civilians and combatants remain under the protection "of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience" in all cases not covered by either the Protocol or other international treaties. Considering the current state of the art and the absence of a clear consensus between States as to the standards of review of AI-based DSS, this paper argues that the Martens clause may provide a guidance for the identification of general principles that should inform the States' assessment in this field.

3. The Contemporary Significance of the *Martens* clause

The Martens Clause first appeared in the Preamble of the 1899 II Hague Convention , which stated that in cases not included in the Regulations on the Laws and Customs of War annexed to the Convention "populations and belligerents" remained under the protection of principles of international law as derived from "the usages established between civilized nations" as well as from "the laws of humanity, and the requirements of the public conscience" (for a detailed analysis of the genesis of the Martens Clause, see the seminal work by Cassese, 2000). In an almost identical formulation, it was then reiterated in the Preamble of the 1907 IV Hague Convention on the Laws and Customs of War.

The Martens Clause was subsequently included in the abovementioned Article 1(2) of Protocol I, with the difference that the previous phrase "usages between civilized nations" was substituted by a reference to customary law as a source of general principles ("established custom"). In the same formulation, the Martens Clause is also part of the Preamble of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW). A version of the Clause that refers exclusively to the principles of humanity and the dictates of public conscience as sources of general principles is instead included in the Preamble of Protocol II to the 1949 Geneva Conventions, concerning the protection of victims of non-international armed conflicts.

The indeterminate character of the Martens Clause – and particularly of the two strands of "principles of humanity" and "dictates of public conscience" - has made it the subject of intense academic scrutiny. Because of it, the Clause has been alternatively considered as an independent source of obligations and as a mere interpretative aid to be recalled *ad abundantiam* in support of interpretations of existing IHL norms on the basis of other general principles of international law (for insights on this debate, see Carpanelli, 2015, pp. 125–143; Cassese, 2000; Crawford, 2006; Meron, 2000; Ticehurst, 1997; more broadly on the qualification of human dignity as a general principle of international law, see De Sena 2023, pp. 538–541; Le Moli, 2019).

With specific reference to the legality of new methods of warfare, the IRCR appeared to refer to the Martens Clause as an independent parameter, stating that "a weapon which is not covered by existing rules of international humanitarian law would be considered contrary to the Martens clause if it is determined *per se* to contravene the principles of humanity or the dictates of public conscience". While this view has encountered some support pending the adoption of specific norms on the subject (ICRC, 2006, p. 17) the lack of consensus among States as to the exact content and meaning of the Clause prevents the sharing of this position.

In this respect, it is quite telling that one of the few States that has explicitly included the principles of humanity and the dictates of public conscience among the parameters of legality included in its review of new weapons under Article 36 of the Protocol – namely Australia – has specifically clarified that, for this purpose, the Clause must be understood narrowly, as preserving customary international law (Australia, 2018). Perhaps also because of these uncertainties, the Martens Clause has been considered in other contributions as a source of non-legal review standards, encompassing ethical and policy considerations (Copeland, 2025).

Nevertheless, this paper argues that the Martens Clause may constitute an interpretative key in the sense of facilitating the extrapolation of general principles of international (humanitarian) law from existing IHL norms, from which rules specifically applicable to AI-based DSS use in targeting may in turn be drawn. In the context of the debate on AWS, it has already been suggested that "principles of humanity" may be used as a source of general principles from which one may draw a blanket prohibition of fully autonomous weapons systems or a rule mandating meaningful human control (Shany & Shereshevsky, 2025). The same conclusion has been drawn from an analysis of general principles stemming from dictates of public conscience (Amoroso, 2025).

The remainder of this paper will then focus on Arts. 35 and 36 of Protocol I in an effort to understand the general principles on which they are grounded, and whether any specific duty of States Parties in relation to the use of AI for targeting purposes may be inferred from such principles. The proposed analysis rests on the assumption that AI-based DSS may be qualified as a method of warfare. This view stems from the consideration that such AI systems can also constitute a tool to use existing weapons (in support, see Klonowska, 2021).

The inference from an existing norm of underlying general principles of international law, and their use as a legal basis to construe a rule applicable to a situation not envisaged by the former norm, has been performed by the International Court of Justice (ICJ) in the *Corfu Channel* case, which has been considered as evidence of the emergence of general principles of international law directly derived from the international legal order rather than from states' domestic orders (Cannizzaro, 2016, pp. 137–138; Palombino, 2021, p. 74). Among the general principles identified in this case, the ICJ included "elementary considerations of humanity".

Even more significantly, in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* the ICJ – after noting the absence of specific prohibitions of the use of nuclear weapons under international treaty or customary law – extrapolated general principles from IHL sources (i.e. The Hague Conventions and Regulations, the Geneva Conventions and their Additional Protocols as well as specific treaties such as the CCW Convention) which included the principle of distinction between civilians and combatants as well as the prohibition to use weapons that cause unnecessary suffering. These principles were then used by the ICJ to construe a rule applicable to the specific case at hand – more precisely, a prohibition on the use of nuclear weapons.

The Martens Clause was specifically mentioned by the ICJ in this opinion "in relation to these principles", albeit more as a further confirmation of the applicability of the mentioned principles to nuclear weapons than as a decisive legal ground – much less as a self-standing one. The ICJ in particular qualified the Clause "as an affirmation that the principles and rules of humanitarian law apply to nuclear weapons" (para. 87) and held that the conclusion whereby IHL was not applicable to nuclear weapons "would be incompatible with the *intrinsically humanitarian character of the legal principles in question* which permeates the entire law of armed conflict and applies to all forms of warfare and all kinds of weapons" (para. 86).

While the *Nuclear Weapons* case may be seen as evidence of the marginal role to be played by the Martens Clause in the construction of legal obligations *vis-à-vis* cases not

directly regulated by existing IHL rules, a possible alternative reading of its mention by the ICJ may suggest that the Martens Clause may constitute a doorway to the judicial consideration, reconstruction and application of general principles which permeate the entire corpus of IHL.

This impression may be reinforced by the consideration of the way in which the Martens clause was applied by Trial Chamber IV of the International Criminal Court in the *Ntaganda* case (para. 47 ff.). In relation to the *chapeau* of paras 2(b) and (e) of Article 8 of the Rome Statute, the Trial Chamber indeed relied on the Martens clause to conclude that an underlying rationale of IHL is to "mitigate the suffering resulting from armed conflict" (para. 48). On the basis of this general principle, it held that the prohibition of rape and sexual slavery under the Rome Statute must also be applied to conduct against members of the same armed force. Incidentally, it must be noted that while not problematic in general, when used to expand the scope of substantive provisions of the Rome Statute on crimes, this interpretation may be at odds with the principle of legality (Heller 2017).

Focusing our attention on the use of AI for targeting purposes, we may ask what general principles of IHL may be identified as underlying Article 35(1), in order to attempt to extract rules that should bind States Parties in conducting their review of AI-based DSS as a method of warfare under Article 36. As noted, Article 35(1) establishes that the Parties to a conflict do not have an unlimited choice in methods or means of war. Article 35(2) and (3) specify this general rule by establishing a prohibition to employ – respectively - weapons, materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering, as well as methods or means of warfare intended or expected to cause long-term and severe environmental damage.

Taken into consideration as a whole, Article 35 essentially expresses the general principle whereby in armed conflict military, necessity must be balanced with humanity (1987 Commentary, para 1389; Winter, p. 12; van den Boogaard, pp. 24–25). Accordingly, the choice of the Parties to a conflict as to means and methods of war must be confined not only to what is lawful under IHL (and international law in general) but also to what is essential to achieve legitimate military objectives. It is worth noting that precisely the 1987 Commentary recalled the Martens Clause precisely in relation to the need to limit the scope of military necessity, noting that even when combatants may enjoy a degree of discretion as a result of recourse to military necessity, they will also be bound by "fundamental humanitarian requirements" (1987 Commentary, para 1393).

Applied to AI-based DSS, this general principle of IHL may be understood as requiring a thorough review of the capability of such systems to perform a careful balance between the requirements of humanity and military necessity. A positive assessment in this context may depend on a variety of factors, including for example the retainment of a meaningful human control on the targeting recommendations produced by AI systems, or the existence of sufficient guarantees and safeguards in relation to the development of relevant algorithms, the feeding of prompts and the correction of known error rates in data gathering and analysis.

4. Conclusions

As one of the manifold applications of AI in warfare, targeting through AI-based DSS raises crucial challenges of compliance with IHL. This paper has dealt with the question of whether principles and considerations of humanity as also enshrined in the Martens Clause may contribute to the creation of common standards in relation to the review of the legality of the use of AI as a military targeting tool. It has been proposed that the Martens Clause – while not an independent source of IHL rules and obligations – may foster the identification of general principles of IHL from which such standards may be drawn.

This conclusion, however, should not be understood as setting aside the need for a much-needed regulation of AI use in warfare through international treaties capable of establishing clear rules on the subject. Currently, the lack of a uniform application of Article 36 by States Parties and the diversity of state practice in relation to the review of the military applications of AI suggest that recourse to interpretative processes aimed at extrapolating IHL norms from general principles of international law is merely a stopgap measure pending the adoption of treaty law sources detailing States' obligations in relation to the review of AI warfare applications.

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ASPECTS OF DUE DILIGENCE IN THE FIELD OF CORPORATE SUSTAINABILITY

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Abstract: *The behavior of businesses in all sectors of the economy is essential for the success of the European Union's sustainability objectives, as businesses, especially large ones, rely on global value chains. It is also in the interest of businesses to protect human rights and the environment, given the growing concern of consumers and investors on these topics. Directive (EU) 2024/1760 on due diligence in the field of corporate sustainability also contributes to the European Pillar of Social Rights, which promotes rights ensuring fair working conditions. This study aims to analyse the novelties that this Directive brings to European Union law, by highlighting the social component of business.*

Key words: *enterprise, investor, consumer, sustainability, diligence*

1. Introduction

According to Article 2 of the Treaty on European Union (TEU), the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, as enshrined in the Charter of Fundamental Rights of the European Union.

In the European Parliament's Communication of 14 January 2020 entitled *"A Strong Social Europe for Just Transitions"*, the European Commission committed to modernising Europe's social market economy in order to achieve a fair transition towards sustainability, ensuring that no one is left behind.

The purpose of Directive 1760/13-June-2024 on corporate sustainability due diligence (hereinafter "the Directive") is also to contribute to the European Pillar of Social Rights, which promotes rights ensuring fair working conditions. It is part of the EU's policies and strategies to promote decent work globally, including in global value chains, as stated in the European Commission Communication of 23 February 2022 on *Decent Work Worldwide*.

Existing international standards on responsible business conduct stipulate that enterprises should protect human rights and set out how they should address environmental protection within their operations and value chains. These are consistent with Article 191 of the Treaty on the Functioning of the European Union (TFEU), which requires a high level of protection and improvement of the quality of the environment,

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as well as the promotion of fundamental European values, as provided in the European Commission Communication of 11 December 2019 on the *European Green Deal*. These objectives require the involvement not only of public authorities but also of private actors, in particular businesses.

2. Subject of the Directive

Directive 1760/13-June-2024 on corporate sustainability due diligence lays down rules concerning:

a) the obligations of companies regarding actual and potential adverse impacts on human rights and the environment in connection with their own operations, those of their subsidiaries, and those carried out by their business partners in their chains of activities;
b) liability for breaches of the above-mentioned obligations; and
c) the obligation for companies to adopt and implement a transition plan to mitigate climate change, aimed at ensuring, through the utmost efforts, the compatibility of the company's business model and strategy with the transition to a sustainable economy and with limiting global warming to 1.5°C, in accordance with the Paris Agreement under the United Nations Framework Convention on Climate Change, adopted on 12 December 2015.

The Directive shall not be construed as a justification for lowering the level of protection of human rights, labour and social rights, or environmental or climate protection provided for under the domestic law of Member States or applicable collective agreements at the time of its adoption.

The Directive is without prejudice to obligations relating to human rights, labour and social rights, or to environmental and climate protection under other Union legislation.

In the event of a conflict between a provision of this Directive and that of another Union legislative act pursuing the same objectives and providing for more extensive or specific obligations, the latter shall prevail and apply with respect to those specific obligations. Thus, from a legal perspective, the Directive does not include special or derogatory rules.

By adopting this Directive, the EU aims to safeguard human rights and the environment. In this regard, Article 3(1)(b) defines "adverse impact on human rights" as an impact on individuals resulting from an abuse of a human right protected under Part I of the Annex to the Directive. Whenever the term "adverse impact" is mentioned, it refers both to abuses against human rights and abuses against the environment.

3. Scope of the Directive

The Directive applies to large companies established in the European Union and to certain non-EU companies operating on the European market.

Thus, according to Article 2(1), the Directive applies to large companies incorporated under the law of a Member State that meet one of the following conditions:

- they have more than 1,000 employees and achieve a net worldwide turnover of over EUR 450 million;

- parent companies that meet the same criteria at group (consolidated) level;
- companies that have concluded franchise, license, or similar agreements when they: achieve a net turnover of over EUR 80 million within the EU and receive royalties exceeding EUR 22.5 million.

According to Article 2(2), the Directive also applies to companies established outside the Union (third-country companies) that:

- generate within the EU a net turnover exceeding EUR 450 million, regardless of the number of employees; or
- are parent companies of a group exceeding that threshold; or
- operate under franchise or licensing arrangements exceeding the thresholds mentioned above (EUR 80 million / EUR 22.5 million).

The Directive imposes due diligence obligations across the entire chain of activities, which includes:

- the company's own activities;
- subsidiaries (affiliates, branches, etc.);
- business partners in the upstream supply chain — production, extraction, suppliers of raw materials;
- downstream partners — distribution, transport, storage, recycling. Excluded from this scope are completely independent services (e.g. postal, financial, or telecommunications services that do not affect the value chain).

Due diligence obligations apply with respect to:

- respect for human rights (according to international instruments listed in Annex I, such as the United Nations Declaration, the International Labour Organization conventions, etc.);
- environmental and climate protection, including the reduction of greenhouse gas emissions;
- responsible corporate governance through the integration of due diligence into companies' internal policies;
- prevention and remediation of adverse impacts (e.g. pollution, exploitation, forced labour, deforestation, etc.).

Only legal entities may qualify as "enterprises" under the Directive, as exemplified in Article 3(1)(a) (e.g. credit institutions, investment firms, alternative fund managers, reinsurance companies, central securities depositories, electronic money institutions, etc.).

Consequently, professionals operating as natural persons are not included in this category.

4. The concept of Due Diligence

Sustainability due diligence means the process by which companies identify, prevent, mitigate, cease, and address actual or potential adverse impacts on human rights and the environment arising from their own activities, those of their subsidiaries, or their business partners within their chain of activities.

In short, due diligence is not merely a one-off analysis (as in traditional civil or commercial law) but an ongoing process of managing the risks of social and environmental adverse impacts within a company's economic activity.

This involves: identifying risks of abuse (e.g. forced labour, pollution, illegal deforestation, corruption); assessing their severity and likelihood; preventing and mitigating them through internal policies and measures; monitoring and periodic reporting; remedying any damage caused (Morris, 2025, p.53).

The objectives of the Directive are to create a framework in which companies:

- act responsibly towards people and the environment;
- integrate non-financial (social, environmental, ethical) risks into economic decision-making;
- contribute to a green and fair transition of the European economy.

Due diligence does not imply mere legal compliance. The Directive goes beyond the obligation of compliance with the law: it requires proactive analysis and preventive measures, even in situations where no concrete violation has yet occurred. For example, a company must check how its suppliers in Asia or Africa respect workers' rights, impose contractual clauses of responsibility, and publish climate transition plans (Principale, 2023, p.39).

From a theoretical standpoint, in classical legal interpretation, the concept of due diligence resembles an "obligation of means" rather than an "obligation of result": a company is not liable for the mere occurrence of a violation but for failing to exercise reasonable diligence to prevent it.

In other words, a firm is not guilty for every incident, but only if it failed to do everything reasonably possible to prevent it.

In conclusion, due diligence appears to represent a legal obligation of responsible governance — a systematic process for managing human rights and environmental impact risks throughout the company's value chain.

One might define "due diligence in corporate sustainability" as the set of legal, organizational, and operational measures through which a company identifies, prevents, mitigates, monitors, and remedies the actual or potential adverse effects of its own activities, those of its subsidiaries, or its value chain partners on human rights, the environment, and corporate governance.

The concept entails an obligation of means, not of result, and reflects a proactive approach to corporate responsibility, integrating social and environmental considerations into business strategy in line with international standards established by the UN, OECD, and ILO. Through this regulation, the European Union establishes a unified framework for sustainable governance, transforming due diligence from a voluntary corporate social responsibility practice into a legal obligation of responsible conduct across global value chains.

Evidently, the practical application of this Directive, once implemented into the national legislation of Member States, will generate a *Guideline of Best Practices*, which will be essential to ensure the consistent application of the terms and concepts defined and addressed by the Directive.

5. Implementation of the Due Diligence Obligation

The Directive establishes a series of mechanisms for fulfilling the companies' due diligence obligations, namely:

a) Integration of due diligence into company policies and risk management systems. This requires companies to integrate due diligence into all their policies and relevant risk management systems and to implement a due diligence policy ensuring a risk-based approach. This policy is to be developed through prior consultation with employees and their representatives and must include:

- a description of the company's approach to due diligence;
- a code of conduct setting out the rules and principles to be respected throughout the entire company, its subsidiaries, and by its direct and indirect business partners;
- a description of the processes established to integrate due diligence into relevant company policies and to implement the due diligence obligation, including measures to verify compliance with the code of conduct and to extend its application to business partners.

b) Identification and assessment of actual and potential adverse impacts arising from the company's own operations or those of its subsidiaries, and, where linked to the chain of activities, from its business partners' operations.

This involves mapping the company's own operations, subsidiaries, and, where linked to the chain of activities, its business partners, to identify the general areas where adverse impacts are most likely to occur and most severe. Based on this mapping, an in-depth assessment of operations is to be carried out, relying on solid quantitative and qualitative data.

c) Prioritisation of identified actual and potential adverse impacts.

Where it is not feasible to prevent, mitigate, cease, or minimise all identified adverse impacts at the same time and in full, companies must establish a prioritisation order in accordance with Article 8 of the Directive, so as to fulfil the obligations provided in Articles 10 and 11.

d) Prevention of potential adverse impacts through appropriate measures such as:

- developing and implementing a prevention action plan with clear, reasonable timelines for implementation and qualitative and quantitative indicators to measure improvements;
- obtaining contractual assurances from direct business partners guaranteeing compliance with the company's code of conduct and, where applicable, the prevention plan, including cascading such guarantees to their own partners, insofar as their activities are part of the company's chain of activities;
- making necessary financial or non-financial investments, modifications, or updates, e.g. in structures, production, or operational infrastructures;
- adapting business plans, strategies, and overall operations, including procurement, design, and distribution practices;
- providing targeted and proportionate support to microenterprises that are business partners, where necessary, taking into account their resources, knowledge, and constraints — including capacity building, training, or modernization of management systems — and, where compliance with the code of conduct or prevention plan would endanger the viability of the microenterprise, by offering targeted financial support such as direct funding, low-interest loans, supply guarantees, or assistance in securing financing;

- collaborating with other entities, including, where appropriate, to enhance the company's capacity to prevent or mitigate adverse impacts, especially when no other measure is suitable or effective, in compliance with EU law, including competition law. Companies may also adopt additional appropriate measures, such as engaging with business partners on expectations regarding prevention and mitigation of potential adverse impacts, or facilitating capacity building, advice, administrative and financial support, including loans or funding, considering the resources, knowledge, and constraints of the business partner.

Where potential adverse impacts cannot be adequately prevented or mitigated through these measures, the company may seek contractual assurances from indirect business partners to ensure compliance with its code of conduct or prevention plan.

If potential adverse impacts still cannot be adequately prevented or mitigated, the company must ultimately refrain from entering into new or extending existing relationships with the business partner concerned or within whose chain of activities the impact occurred.

Before temporarily suspending or terminating the relationship, the company must assess whether it can be reasonably foreseen that the adverse impacts of such action would be clearly more severe than the unprevented or unmitigated adverse impact.

In such cases, the company is not obliged to suspend or terminate the business relationship and may inform the competent supervisory authority of the duly justified reasons for its decision.

Member States may provide for the possibility of temporarily suspending or terminating business relationships governed by their national law, except for contracts that parties are legally required to conclude.

e) Cessation of actual adverse impacts that have been or should have been identified. Where an adverse impact cannot be immediately stopped, Member States must ensure that companies minimise its extent. Companies are required to take appropriate measures, such as:

- neutralising or minimising the impact, in proportion to its severity and to the company's involvement;
- if immediate cessation is not possible, developing and implementing, without undue delay, a corrective action plan with a clear, reasonable timeline and measurable indicators of improvement;
- designing corrective action plans in cooperation with sectoral or multi-stakeholder initiatives;
- obtaining contractual assurances from direct business partners to ensure compliance with the company's code of conduct and, where applicable, corrective action plan, including cascading such guarantees;
- making necessary financial or non-financial investments, or operational updates;
- adapting business plans, strategies, and operations, including procurement, design, and distribution;
- providing targeted and proportionate support to microenterprises, including capacity-building, training, or management system modernization, and, where necessary, targeted financial support such as funding, low-interest loans, or supply guarantees;

- collaborating with other entities to enhance capacity to cease or minimise adverse impacts, especially when no other measure is effective;
- ensuring remediation.
- Companies may also adopt additional measures, such as engaging with partners on expectations regarding cessation or minimisation of adverse impacts, or providing access to capacity building, counselling, administrative or financial assistance. Where actual adverse impacts could not be ceased or adequately minimised through these measures, the company may seek contractual assurances with an indirect business partner to ensure compliance with its code of conduct or corrective action plan.

f) Remediation of actual adverse impacts by a company, individually or jointly.

If the actual adverse impact was caused solely by the company's business partner, the company may ensure voluntary remediation. It may also use its influence over the business partner responsible for the adverse impact to secure remediation (Usman Rasa, 2025, p.21).

6. Liability of Companies for Non-Compliance with the Due Diligence Obligation

As a general principle, the Directive establishes *civil liability* for companies that breach their due diligence obligations.

Member States are required to monitor and facilitate the pursuit of civil liability against entities covered by the Directive that violate its obligations *intentionally or negligently.*

In other words, liability operates according to general civil law principles concerning fault.

A company becomes liable only when, by breaching its due diligence obligation, it causes harm to a natural or legal person protected by the Directive.

The Directive also introduces *derogations from common civil law*, such as:

- a *longer limitation period* of five years;
- *standing for representative actions*, allowing claims to be brought not only by affected individuals but also by organizations protecting human rights, trade unions, non-governmental organizations, and others;
- *judicial powers to order disclosure of evidence* ex officio from the liable company, ensuring that such evidence remains confidential.

Member States are required, when transposing the Directive into national law, to ensure the *priority application* of the provisions regarding the civil liability of companies.

In addition to civil liability determined by national courts, the Directive also provides for *sanctions* for companies that breach its obligations — effectively introducing a regime similar to *administrative or contraventional liability.*

The Directive stipulates that, in order to ensure the effective enforcement of national provisions transposing it, Member States must establish *dissuasive, proportionate, and effective sanctions* for violations of its measures.

To make such a sanctions regime effective, these must include *pecuniary penalties* and *public statements* identifying the responsible company and the nature of the

infringement, where the company fails to comply with a monetary sanction decision within the applicable deadline.

Member States must ensure that, when imposed, the pecuniary sanction is *proportionate to the company's worldwide net turnover.*

However, this does not oblige Member States to base all sanctions solely on turnover in every case.

They may decide, in accordance with national law, whether sanctions are to be imposed directly by supervisory authorities, in cooperation with other authorities, or by referral to competent judicial authorities.

To ensure *public oversight of enforcement*, decisions by supervisory authorities imposing sanctions for non-compliance with national provisions transposing the Directive must be published, communicated to the *European Network of Supervisory Authorities*, and remain publicly available for *at least three years.*

7. Conclusions

Directive 1760/13-June-2024 on Corporate Sustainability Due Diligence is a legislative act of European Union law that must be transposed into the national legal systems of the Member States *by 26 July 2027.*

It represents a significant effort to protect both *natural and legal persons* within the Member States of the European Union, as well as those *outside* its territory.

As already indicated, the Directive may also apply to companies *established outside the European Union* that enter into or carry out commercial activities within the EU market.

In our view, the implementation of this Directive across all Member States demonstrates the continued commitment of the *cradle of global civilization — the European Union* — to protect the most important contemporary human values: *human rights, the environment, and climate conditions.*

Undoubtedly, as with any bold undertaking, the application of these regulations will not be free of difficulties.

However, as in all meaningful endeavours, in order to reach the desired result, one must begin the journey.

We hope that this journey will embody the path toward the *balance* proposed by the Directive itself, considering that the values it upholds are *of global and contemporary significance.*

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THE PROMOTION OF HUMAN DIGNITY THROUGH THE ENVISIONING OF AN EU LEGAL FRAMEWORK ON END-OF-LIFE ISSUES: AN IMPREGNABLE MATTER OR A CONCRETE POSSIBILITY OF UNION LEGISLATION?

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Abstract: *In 2025, the EU Commission responded to the possibility of regulating end-of-life matters across the Union, denying that it has a general power to intervene in this area. In the Treaties it is laid down that the Union only has coordinative or supportive competence with respect to the protection and improvement of human health. Yet, one may question if primary law provisions might be the legal basis for legislative action here. In the same fashion, the CFREU and the ECHR need to be paid attention to. Hence, this article seeks to outline whether the EU has an actual (legislative) power to regulate the matter and investigate whether the EU can expand the scope of the protection of individuals' human dignity, despite its past reluctance to do so.*

Key words: *Dignity, End-of-life, European Union, Healthcare, Legislative competence.*

1. Introduction

Advocates and observers have argued that with medical and other advancements that prolong life, it is inevitable that end-of-life issues will become a major legal topic for the political agenda of sovereign States or international organisations (Pridgeon, 2006; Frawley, 2025). From its standpoint, the European Union (EU) does not at present have standardised guidelines nor proper legal acts on the matter. Responsibility for citizens' healthcare, including decisions about the way of dying, remains the responsibility of Member States. Yet, the matter becomes relevant when it's accepted that, from the references contained in EU law, dignity may be intended not so much as a subjective right, but as an objective principle or founding value with an autonomous prescriptiveness (Pocar, 2002, p. 87). Nonetheless, neither EU Law nor the European Convention on Human Rights (ECHR) contain provisions precluding EU countries from

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legislating on "dignified death" – be it euthanasia, assisted suicide or the turning off of life support machines.

Whilst all EU Member States agree on the abstract concept of human dignity, when it comes to bioethical issues the divergence of positions taken by different countries is noticeable. Indeed, some States in the Union have taken a more liberal view than others: several have a legislation in force that allows euthanasia to be administered by physicians (Belgium, Spain, Luxembourg, Netherlands); other EU countries permit assisted suicide, but not euthanasia (Austria, Germany, Italy, Luxembourg); there are also Member States currently working on either euthanasia or assisted dying legislation (Cyprus, France, Ireland, Malta, Portugal, Slovenia).

One might wonder if any supranational harmonization would be required at this point in time. A common legal framework becomes particularly relevant bearing in mind that bioethical questions and the new developments in biomedical research are of a transnational nature. For instance, the so-called "sin shopping" throughout the EU – where citizens' cross borders for experimental treatments, surrogate motherhood and euthanasia – is a clear demonstration of how bioethics issues can grow to be internal market issues in addition to being fundamental rights, or more specifically, dignity, issues.

But over the years, in response to pressing questions from Members of the European Parliament, the European Commission has abundantly reiterated that the EU is not competent to deal with it in any way. Not surprisingly, as pointed out in the latest answer of 20 May 2025 (E-000811/2025), the second von der Leyen Commission held that any responsibility "for terminally ill patients as well as related ethical questions, rests with the Member States". But, at the same time, the issue is increasingly being "monitored" and ruled upon by the European Court of Human Rights (ECtHR), responsible for the interpretation of ECHR's provisions.

Hence, from such statement stems the main research question of the present paper: is it truly so? Close to be an impregnable matter and regardless of the rigid wording of the Treaties, is the EU actually not entitled to undertake any legislative activity on end-of-life matters? Or can it, in some way, try to legislate in this field?

To answer this question, the paper will try to first focus on the previous EU legislation regarding bioethics in an attempt to demonstrate how the Union eventually exerted influence on ethical questions (Section 2). Accordingly, it will discuss a potential two-fold way of exercising a legislative power on end-of-life matters. With different benefits and drawbacks, it is contended that this could be done through the use of its internal market regulatory powers (Section 3) or the application of a human rights-based approach rooted in the two distinct bill of rights relevant to the Union, namely the Charter of Fundamental Rights the EU (CFREU) and the ECHR as well as the latter's caselaw (Section 4). Lastly, some final remarks will draw conclusions on the original research question and tentatively foresee future developments on the matter at hand (Section 5).

2. The European Union's Action on Bioethics: Stretching the Treaties' Boundaries

Basically, EU healthcare policy is complex. It meshes economic policy, human rights, criminal law, professional licensing and many other areas into one concept. Furthermore, the cultural expectations are incredibly diverse. Ethical and bioethical questions in general were not seen, for a long time, as an issue for the then European Community, given that it was primarily an economic community. So, it has been contended that the EU cannot legislate on end-of-life issues due to the boundaries set by the Treaties (Pridgeon, 2006).

Today, apart from "public health matters" as a shared competence (art. 4, para. 2, let. k), TFEU), the EU does not have legislative competence for policy areas in which bioethical questions are central, namely "human health" (art. 6, let. a), TFEU). On such matters, the Union can only support, coordinate or supplement the actions of the Member States. Rather, the principle of subsidiarity applies (art. 5, para. 3, TEU) to both public health and human health policies: it is the Member States that take the fundamental decisions in this field, such as whether or not to allow assisted suicide or euthanasia in their country. Additionally, "human health" is recalled by a horizontal clause demanding the Union, "in defining and implementing its policies and activities" to take into account its promotion (art. 9 TFEU); but such wording does not alter the solid grasp of Member States on the matter whatsoever. One should also add to this tentative list art. 182 TFEU, as it establishes the framework of EU's research policy and thereby determine what, in the field of biomedical research, can be funded.

A "limited" EU individual health policy addresses objectives relating to the provision of medical care and individual health. Its objectives include creating universal access to health care (Council Conclusions, 2006/C 146/01), which entails regulating the medical field in general, as well as allowing access to medicinal products, health-care professionals, and health insurance. But, in the European context, it is an area peculiarly regulated through different modes of market regulation without having its proper legislative basis. This leads to what we could call an *indirect* legislative policy by the Union. A dated example would be Regulation (EEC) 1408/71 on the application of social security schemes to employed persons and their families moving within the EU.

And, from this stance, a number of elements could be listed in support of the notion that a body of EU biomedical or bioethical law does indeed exist. Directives that regulate the circulation of goods for individual health are those relating to patents (Directive 98/44/EC), blood, (Directive 2002/98/EC), tissue (Directive 2004/23/EC), and organs (Directive 2010/45/EU). It is riveting to see how these acts do not refrain from referring to dignity, suggesting that this is an element of interest to the European legislator after all. For instance, Directive 2004/23/EC (recital 16) requires that "the dignity of the deceased donor should be respected", for instance through the reconstruction of the donor's body.

And, rather decisively, the EU is legislating on euthanasia at this very moment, just not with reference to human beings. In the amendments adopted by the European Parliament on 19 June 2025 on the *Proposal for a regulation on the welfare of dogs and cats and their traceability* (P10_TA(2025)0135), the amended text renders a crystalline

definition of euthanasia (art. 3) as well as actual rules to follow in order to consider such treatment legally provided. The cumulative requirements include: a not achievable recovery; severe pain or suffering that cannot be alleviated; contrariety to the rules of well-being; an action exclusively carried out by a veterinarian and with the prior consent of the operator.

Momentarily setting aside the legal acts investing medical services (Regulation (EC) 883/2004; Directive 2011/24/EU), surely capable of regulating a medical treatment causing the voluntary death of the patients, additional evidence of the EU's involvement in ethical matters can be found in soft law, (*e.g.*, P5_TA(2000)0375) and in the advisory bodies' work. Furthermore, from 1995 to 1998, the European Commission supported the "Basic Ethical Principles in European Bioethics and Biolaw" research project, based on the cooperation between 22 partners coming from most EU countries, which ended up publishing the so-called Barcelona Declaration. The aim of the project was to identify and describe the ethical principles – autonomy, dignity, integrity and vulnerability – to be considered as essential values for European bioethics and biolaw (1998). Specifically, the Barcelona Declaration features a definition of dignity, which is "variously, identified with the capacity for autonomous action" (Section C, point 1). However, that did not transition into an actual stance on autonomy in end-of-life matters, which are to be cautiously "subject of extensive debate and public consultation" (Section D, point 15). Nonetheless, even when the document seems to rule out an EU overarching legislation, since its principles "do not abolish cultural variations in Europe" (Section D, point 5), it then adds a subsidiarity condition open to interpretation ("as long as they comply with the principle of subsidiarity").

This only contributes to the impression that – given that the Union has already dealt with bioethical issues – it is more likely that the EU "does not want to" legislate on end-of-life matters, rather than "cannot". Eventually, the "stretching" of the Treaties described could be replicated through internal market integration or via a human rights-based approach (HRBA).

3. A First Solution: (Technical) Regulation of End-of-Life Matters Through the Internal Market

The main route to follow in the potential Union's regulation of bioethics relies on art. 114 TFEU. The provision, broadly used by the European legislator to cover a wide array of matters, is the legal basis for an EU's action meant to regulate the internal market and, in the interest of this research, the circulation of medical services. In truth, the already existing legislation on (transnational) medical services as well as the caselaw brought forth by the European Court of Justice (ECJ) jointly push towards a direction where "morality norms, which define collective identity, are moving towards a European-wide formulation" (Kurzer, 2004, p. 10).

More than Regulation (EC) 883/2004, on the coordination of social security systems, it is Directive 2011/24/EU, on the application of patients' rights in cross-border healthcare, that represents an (again indirect) act of legislation on end-of-life matters. Indeed, the directive ensures that travel or cross-border settlement of patients can happen freely, or

that health services – among which euthanasia or assisted suicide are included – can be delivered from the territory of one Member State into the territory of another. The directive aims to facilitate access to safe and high-quality health care provided or prescribed in a Member State other than the Member State of affiliation. At the same time, however, it also has the objective of promoting cooperation on health care and clarifying the relationship of patients' rights, as developed in the internal market, with cross-border health care. Directive 2011/24/EU therefore admits "sin shopping" in the name of the marketing of services and freedom of movement, but obviously it cannot impose any ethical consideration on the States, namely a national legislation on euthanasia. In other words, Directive 2011/24/EU allows end-of-life services to be carried out in the Union, but only in a transnational context where Member States already have such legislation in place.

Nevertheless, a top-down harmonisation in bioethical matters can be observed in the ECJ's caselaw regarding the internal market. In particular, the Court has considered that the legal categories that form the ordinary grammar of internal market legislation and policies ("goods", "services", etc.) can be technically applied to biomedical issues.

In the *SPUC v. Grogan* case (C-159/90, 1991), on access to health care in another Member State for the purpose of terminating a pregnancy, the Court established that health care falls within the ambit of the freedom to provide and receive services. But not only that. In the same case, the Court held that a citizen of any EU Member State is in principle allowed to travel freely to another Member State for medical services, unhindered by legislative and possible moral obstacles. The same reasoning process was seen in *Josemans* (C-137/09, 2010), concerning the marketing of soft drugs for medical use.

This means that the Court "adopted a 'patients-centred' and 'needs-based' approach" (De Ruijter, 2019, p. 101) and, according to some, circumvented national legislation based on ethical and moral considerations – such as those relating to reproductive, drug and end-of-life tourism (Hervey & McHale, 2004, p. 144). What can be stressed is that the ECJ relied on technical arguments to rule on an ethical issue and, as was duly noted, at the same time avoided "to engage with the substance of the ethical choice" (van Leeuwen, 2018, p. 1422), which of course rests on Member States.

The Court's initial narrative of granting freedom of movement no matter what, where the diversity of national legislations was seen as an impediment to market integration, was confirmed in *Kohl* (C-158/96, 1998). In this case, the ECJ determined that any prior authorization procedure, through which Member States had strengthened their autonomy by limiting access to cross-border health care, could be in direct breach of primary treaty law (art. 56 TFEU). However, in order to only just stretch and not overstep the boundaries of the Treaties, at a certain point the Court preferred to curb the expansion of internal market-related rights.

For instance, in the *Tobacco Advertising* case (C-376/98, 2000) it was established that the European legislator cannot create legislation with health as a central and single objective. There must be an internal market connection as a legal basis for most EU health law. Additionally, in *Smits and Peerbooms* (C-157/99, 2001) the Court determined that the maintenance of the balance of a social security system may provide reason to

override the application of the freedom-of-movement principles. The *Conegate* case (C-121/85, 1986), concerning the export to the UK of sex dolls manufactured in Germany, and later *Jany* (C-268/99, 2001), about prostitution, already cleared that any Member State can be able to "prove" the existence of an ethical choice that is different from that of another Member State. Under these circumstances of genuine differences in ethical positions, following a "substantive proportionality test" (de Witte, 2013, p. 1550), restrictions on free of movement may be allowed within the internal market.

Despite this, the aforementioned reasons are not good justifications to completely shield ethical cases from the application of internal market law. In 2011, the ECJ had the chance to rule on the Directive 2004/48/EC, in the field of intellectual property law, which prohibited Member States from issuing patents for inventions in which human embryos were used. Precisely, in *Brüstle* (C-34/10, 2011), the Court held that the concept of "human embryo" should be given an autonomous definition in EU law (paras. 25-26). As such, it can be said that the ECJ has effectively harmonized what constitutes a human embryo under EU law, *i.e.* achieving harmonization on the matter regardless of the transnational context. In this sense, as a drawback, it must be noted that any harmonised legislation, for instance on end-of-life matters, could only technically describe "how" to deliver euthanasia or assisted suicide, but not "if" such medical service is to be granted in EU Member States – not differently from what has been seen *supra* with the current text of the proposed regulation on the welfare of dogs and cats.

Furthermore, not so long ago the ECJ has been capable, to a certain extent, of forcing Member States into (at least) accepting the ethical choices of the others. In *Coman* (Case C-673/16, 2018), the Court held that those EU States that don't recognize same-sex marriages have to interpret the concept of "spouse" under Directive 2004/38/EC in such a way that it applies to same-sex couples who have lawfully concluded a marriage in another Member State allowing same-sex marriages. This not only effectively leads to mutual recognition of same-sex marriages in the EU in the case at issue but, to protect the *effet utile* of the free movement provisions, could be used in the future for other ethical-sensitive matters, such as cross-border recognition of wills and euthanasia declarations. But by acting so, the EU is – in a way – regulating euthanasia.

Afterall, taking into due consideration the potential conflict with the subsidiarity principle, "[d]espite its fundamentally and intrinsically economic origins, the EU legal order has arguably always been open to non-market values" (Vauchez, 2017, p. 47).

4. A Complex Second Solution: Human Rights Enforcement as a Tool to Oblige the States to Regulate the Matter

So far end-of-life issues have been treated as issues of competence, with it being evident that the European Union lacks a clear-cut power to regulate human or individual health. Yet, healthcare that is "increasingly patient-centred and individualized" reveals an inextricable connection between itself and fundamental rights – other than the internal market-related ones – to the point that the Union acknowledges the "citizens' and patients' rights as a key starting point" (COM/2007/0630 final). Hence, an

involvement of the EU in health could have fundamental rights implications while at the same time going "beyond" its competences.

One could ask if this could turn into a legitimate action thanks to the human rights-based approach, nowadays spreading from (substantive) rule of law to transnational and international criminal law (Oriolo 2024). Fundamental rights in the EU can have a role in the process of policymaking in order to determine the legitimacy of a peculiar policy as well as can be used for judicial review of EU legislation or national law within the scope of Union law (arts. 2 and 6 TEU). Besides, outside their formal status in Union law and the scope of application of the CFREU, said rights have value and importance that extends beyond their formal judicial enforceability (Lenaerts, 2012).

As for the Chater, it protects a number of individual rights that are particularly relevant to the end-of-life context. Even though human dignity stands as a preeminent value (art. 1 CFREU), almost considered to be of a "holy character" and "a sort of "sanctuary" (Di Stasi, 2011, p. 18), the right to the integrity of the person in the field of medicine and biology gains relevance through its emphasis on the "free and informed consent of the person concerned" (art. 3 CFREU). Prohibition of torture and inhuman or degrading treatment or punishment (art. 4 CFREU), potentially recalled by those undergoing unwanted medical treatment, and a mere "principle" of health care (art. 35 CFREU) also need to be considered. On the other hand, the right to life (art. 2 CFREU) – eventually used as a factor cautioning against access to end-of-life services in another Member State – do complete a multifaceted fabric. Nevertheless, this framework recognizes that the violation of fundamental rights in the context of health policy can be viewed as a "dignity violation". Yet, the legal significance of these rights may be diminished by its scope of application (art. 51 CFREU), which is not to exceed established EU competences in a particular policy field.

Even when considering that the EU has limited competence with respect to the provision of health care (arts. 4, 6 and 168 TFEU) as well as the underwhelming ECJ's caselaw on end-of-life matters, a potential leeway could be found in light of art. 52 CFREU, that ensures the necessary consistency between the CFREU and the ECHR. An "equivalence clause" (para. 2) establishes that, insofar as the rights enshrined therein correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR and the European Court of Human Rights (ECtHR), whose caselaw on end-of-life issues is extensive.

In particular, an equivalence between the provisions of the two bills of rights emerges with respect to right to life (art. 2 ECHR), prohibition of torture (art. 4 ECHR) and the right to respect for private and family life (art. 8 ECHR), understood as encompassing the right to exercise an autonomous informed consent. Should the ECtHR find that States do need to include euthanasia or assisted suicide in their legal systems in the interpretation of these rights, it might therefore clarify both "how" and "if" the Union can regulate the matter given the existence of corresponding provisions in the CFREU.

4.1. The ECtHR's Contribution to Define End-of-Life Issues and their Regulation

First and foremost, *Pretty v. United Kingdom* (2346/02, 2002) is a noteworthy judgment on a case of denied euthanasia where the ECtHR held that there had been no violation of the right to life, finding that art. 2 ECHR could not, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die. Neither the Court held that there had been a violation of the prohibition of inhuman or degrading treatment, nor that the applicant's choice to avoid what she considered an undignified and distressing end to her life fell within the scope of the protection of private life accorded by the ECHR.

Even if the ECtHR could not but be sympathetic to the applicant's apprehension that, without the possibility of ending her life, she faced the prospect of a distressing death, nonetheless it was cleared that the invoked positive obligation on the part of the State would require that the Party States shall sanction actions intended to terminate life, an obligation that cannot be derived from the ECHR. The judgment is also relevant as it also cared to explain that the "very essence of the Convention is respect for human dignity and human freedom", especially in "an era of growing medical sophistication combined with longer life expectancies, many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity" (para. 65).

Meaningful novelties were found in *Lambert and others v. France* (46043/14, 2015), where the ECtHR again laid down that there would be no violation of art. 2 (right to life). Nonetheless, in addressing the question of the administering or withdrawal of medical treatment, the Court created *a set of criteria* to be used as a test for the present and future cases: the existence in domestic law and practice of a regulatory framework "compatible" with the requirements of art. 2 ECHR; whether account had been taken of the applicant's previously expressed wishes and those of the persons close to him, as well as the opinions of other medical personnel; the possibility to approach the courts in the event of doubts as to the best decision to take in the patient's interests (para. 143).

Finally, in *Karsai v. Hungary* (32312/23, 2024) the judges of Strasbourg observed that there were potentially broad social implications and risks of error and abuse involved in the provision of physician-assisted dying. The ECtHR took note of a growing trend towards the decriminalisation of medically assisted suicide, especially with regard to patients suffering from incurable conditions (para. 143). Conversely, the judges also noted that the Convention must interpreted and applied in the light of the present-day conditions. The need for appropriate legal measures should therefore be kept under review, taking into account developments in European societies and in international standards in medical ethics in this domain.

The Court further considered that high-quality palliative care, including access to effective pain management, was essential to ensuring a dignified end of life (para. 154). Additionally, the ECtHR found that the refusal or withdrawal of treatment in end-of-life situations was intrinsically linked to the right to free and informed consent (art. 8 ECHR), rather than to a right to be helped to die, and was widely recognised and endorsed by the medical profession, and also laid down in the Council of Europe's Oviedo Convention

(para. 175). Furthermore, highlighting a differentiation of conducts, refusal or withdrawal of life-support was allowed by the majority of the Party States whereas proper euthanasia or assisted suicide was not. The Court therefore took the view that the alleged difference in treatment of the two categories is objectively and reasonably justified (para. 176).

To sum up, at the present time, it is not possible to deduce from the ECHR the existence of a duty to live, neither that of a right to die for individuals, nor an obligation upon States to provide for it. A connection with the right to private life has been found instead (*Karsai v. Hungary*). Consequently, this affects the corresponding CFREU provisions. Meanwhile, the wide margin of discretion afforded to States in this respect does not mean that they are completely free to take any initiative, either preclusive or permissive (Zannoni, 2020, p. 211). Indeed, the sole existence of arts. 2 and 8 ECHR imply that State Parties must draft comprehensive legal guidelines setting out the conditions for euthanasia and assisted suicide, as reasoned in *Lambert and others v. France*. Such could be the content from where a hypothetical future EU legislation on end-of-life matters could start. Moreover, the distinction drawn in *Karsai v. Hungary* between the legal status of refusal/withdrawal of life-support and that of euthanasia/assisted suicide suggests a certain degree of ethical maturity in the region. Furthermore, if euthanasia and assisted suicide are not legalized, at least in extreme circumstances, it is easy to foresee a future in which the ECtHR will be prompted to denounce it as a violation of art. 8 ECHR, notwithstanding all the controversy surrounding this issue.

5. Conclusion

The increased circulation in the EU of patients intending to make use of end-of-life medical services accentuates the tensions and contradictions in a system relying on national morality standards. From its part, the EU has demonstrated its capacity to regulate on bioethical and biomedicine matters. This is possible by stretching the scope of application of art. 114 TFEU, rather than by relying on art. 168 TFEU. In this respect, it appears that the EU would be perfectly able to define at least the cross-border aspects of end-of-life matters or, eventually, contribute to a technical harmonisation of euthanasia and assisted suicide, without the possibility to oblige States to envision them in their national legal systems. It's even possible that unrestricted access to private medical facilities for EU citizens and the gradual growth in cross border patient flows will push Member States themselves to increase interest in harmonising standards and regulations. Accordingly, it has been said that the "function of the free movement provisions is to build bridges between different ethical positions in the EU" without replacing their national identities (van Leeuwen, 2018, p. 1436). However, staunch opposition considers this as a risk of "EU assuming the bureaucratic control of death" (Frawley, 2025, p. 42).

On the other hand, resorting to a human rights-based approach, allowing to assess the legality of the acts from EU institutions and Member States in the view of human rights, seems a less desirable and feasible solution today. Apart from sympathy and some

(narrow) guidelines, the current interpretation of both the CFREU and of the ECHR has not produced any true State obligation to grant a dignified death to those who are willing to obtain it. An EU legislation supported by this chassis seems unlikely at this time.

Interestingly, the EU is also an ally for public opinion, which picks and chooses different elements of a European dialogue to fault national decision-makers. That's the case of the petition (art. 24 TFEU) entitled "Voluntary Assisted Dying as a Fundamental Human Right in the EU", which was submitted to the European Parliament in 2024 by EUmans and other 38 NGOs. It explores the Union current (and future?) competences to advance an alternative dignity-based agenda contrary to the preferences of the national leadership and could somehow provide a bottom-up legitimacy for future actions on dignified death.

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HUMAN DIGNITY IN THE SHADOW OF SUSTAINABILITY: THE EU's GREEN TRANSITION AND THE EXCLUSION OF INFORMAL MINING COMMUNITIES IN SUB-SAHARAN AFRICA

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Abstract: *The European Union's ambition to be carbon-neutral by 2050 has significantly increased demand for critical minerals, particularly from Sub-Saharan Africa, where informal mining is predominant. Although these objectives are based on the EU's commitment to international law and constitutional principles, their external implications raise profound questions on inclusivity, equitability, and global justice. Through a critical legal analysis approach, this article highlights the tensions between the EU's green ambitions and its global distributive justice. It argues that the rigidity and the lesser sensitivity to the social, economic, and institutional fragilities in the EU climate policy measures risk exacerbating structural inequalities and global economic exclusion.*

Key words: *EU Green Deal, critical minerals, constitutional principles, structural inequalities, sub-Saharan Africa.*

1. Introduction

The European agenda to decarbonise and transform Europe into a fossil-free continent by 2050 makes the European Union a pioneer in the global north in addressing climate change and promoting sustainability. However, achieving these ambitious objectives relies on the increased demand for and extraction of critical raw materials (CRMs) such as cobalt, copper, lithium, and other rare earths sourced primarily from the Global South and particularly Africa. This demand has not only made competition between capitalist countries in the Global North much stronger, but it has also made competition between different interest groups in resource-rich countries. Relatively, this competition has exacerbated structural inequality and political fragility. The extractive sector in Sub-Saharan Africa, particularly the CRM industry, is an economic backbone and plays a fundamental role in sustaining millions of the most vulnerable populations and contributes substantively to the national revenues that support the implementation of

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many of the national strategic plans (Landry and Johnson, 2021; Weng, 2025). Despite its decades of resilience and maintaining its important role in upholding the social and economic fabric in the region, the informal mining sector faces persistent political vulnerability and legal exclusion, which mirrors the global structural inequalities embedded in the green transition (Brown, 2016; Bali and Kambhampati, 2022; Ward, 2024). In response, the European Corporate Sustainability Due Diligence Directive (CSDDD) seeks to address some of these structural issues that are true to the nature of the extractive industries by compelling companies to take due diligence and be responsible in their supply chain management. However, while the directive is viewed as a strategic mechanism to mitigate human rights and environmental risks, especially in countries with weak corporate governance legal frameworks, its strict compliance measures may create barriers for African informal mining supply chains, preventing them from accessing European markets and sharing in the global benefits of the green transition.

This article, therefore, argues that, although the CSDDD promotes the EU's constitutional and international commitment to sustainability and human dignity, there is a disjunction between these legal aspirations and the lived realities in Africa. In particular, the directive imposes uniform compliance measures, with the assumption that all global stakeholders in the supply chains have similar institutional and economic capacity and the structure to meet these obligations. Drawing on doctrinal legal analysis, the study examines EU constitutional law and the international legal framework in the context of Sub-Saharan Africa. It is argued therein that a genuine green transition should be equitable and ethically grounded. Europe cannot pursue its green goals at the cost of human dignity in the Global South. To ensure that no one is left behind, the European policy mechanisms must be both globally transformative and just.

2. Theoretical and Conceptual Framework

This study is based on an interdisciplinary theoretical foundation that incorporates international law and human rights, EU constitutional law, political economy, and global development governance. It applies these dichotomies to postcolonial and dependency theories, global justice theory, and the emerging discourse on environmental governance to better understand how sustainability and environmental standards are exported from the European Union to the Global South. The global justice theory explains the extent to which these Global North policies genuinely and equitably distribute the costs and benefits within the green transition supply chains. The global justice theory underlines the persistent structural inequalities that accompany these strategic policies, which are designed to accumulate and add value to developed economies while externalising burdens to developing countries (Pogge, 1988; Pogge, 2008).

The postcolonial and dependency theories complement and question these dynamics. It is contended that, despite their justification for promoting sustainability and human rights, these policies can reproduce colonial legacies in economic and power asymmetries (Said, 1977; Prebisch, 1981; Ghosh, 2019). From the perspective of the Global South, Africa is a primary supplier of nearly all critical raw materials needed by

the EU, and these sectors are predominantly informal, exhibiting significant human rights vulnerabilities. The informal mining sector is not legally recognised as legitimate and has always been labelled as illegal in all the European policy structures and designs on environmental governance (Hilson, 2017; Zvarivadza, 2018; Lahiri, 2018). In contrast, the ongoing discourses on transformative environmental governance and global equity theories and the evolving principles of global climate justice examine the CSDDD and the European Green Deal in a broader paradigm of transformative and inclusive environmental governance (Francis, 2022; Francis, 2020). This new perspective emphasises the need for integral development and environmental policies that are accountable and promote inclusive participation and justice as key elements to a green transition.

These theoretical perspectives, therefore, help us to understand the CSDDD and its comprehensibility in bringing justice and fairness as well as its scope in understanding global diversities in both environmental and CRM governance. Particularly, the paper contends that in reference to CRM governance, the nature of the extractive sector differs across regions, and it would be a legal error to make a reference to the principles that govern this sector and the due diligence therein as homogeneously formal. These structural and governance differences, therefore, should be key in drafting Global North policies that have extraterritorial impacts on the Global South.

Thus, the article contributes to the global discourse on the relationship between the Global North and the Global South and the power asymmetries in the governance mechanisms and how these phenomena could be transformed in creating a more just and equitable relationship between the two spheres.

3. The Principles of Sustainability and Due Diligence as Fundamental Principles in the European Union

Sustainability and due diligence are constitutional obligations under Articles 2 and 3 of the Treaty on the European Union (TEU), and the European Union is mandated under Article 21 of the TEU to extend these mandates in its external dimensions. These principles underpin key policy instruments such as Regulation 2021/1119 (it formalized climate neutrality by 2050 as a legal obligation); Regulation 2023/1542 on the EU's progressive environmental principles; and recently the Directive on Corporate Sustainable Due Diligence (CSDDD), where EU-based companies are required to ensure that environmental protection is integrated into their business culture and operations, including those in the supply chains.

The Court of Justice of the European Union (CJEU) provided extensive legal and substantive meaning to these obligations, underlining that environmental protection and sustainable development are not merely programmatic objectives and political aspirations; they are constitutional principles with legally binding powers. In Commission v Council (Case C-176/03), the CJEU agreed to the view that the Union's competence to legislate for environmental protection was an essential element of its objectives.

In Air Transport Association of America v Secretary of State for Energy and Climate

Change (Case C-366/10) and Ålands Vindkraft AB v Energimyndigheten (Case C-573/12), the court further underscored that the requirement to achieve environmental objectives was an integral part of the Union's constitutional identity and legitimises its regulatory and policy measures, even when these may have extraterritorial implications. Reading it together, the CJEU jurisprudence affirms that Article 3(3) TEU is non-derogable in regard to the Union's commitment to sustainable development and environmental protection, and these principles now constitute the Union's constitutional law.

The Treaty on the Functioning of the European Union (TFEU, Articles 3, 11, and 191) emphasises this constitutional obligation by requiring the integration of environmental protection into the definition and implementation of all Union policies and activities, hence highlighting the need for coherence between economic growth, social progress, and sustainable development. Article 191 TFEU in particular sets out four guiding principles as cornerstones of environmental protection, namely the precautionary, the preventive, rectification, and the "polluter pays" principles that aim at ensuring a high level of environmental protection. The court in United Kingdom v Council (C-84/94) and later in the PFIZER Animal Health case (C-13/99 P) argued that environmental principles are not mere guidelines; they are considered general principles of EU law that require states to take all necessary precautions to ensure that no harm is done to the environment.

In fact, according to the recently adopted EU Directive 2024/1203, EU member states, upon ratification of this convention, will be required to amend their national criminal laws to ensure that environmental violations are felony and could be penalised under domestic criminal law. Therefore, there is no doubt that the European Green Deal represents these constitutional commitments, and it translates these strict mandates into a comprehensive policy framework aimed at achieving climate neutrality by 2050, promoting a circular economy, and fostering social inclusion. In this framework, sustainable development and environmental protection cut across constitutional imperatives; it requires all sectors that depend on critical raw materials, such as transport, industries, and energy, to be consistent with those principles. However, the effective implementation of these legal obligations reveals a structural vulnerability. The Europeans' transition to no fossils and a low-carbon economy highly depends on the stable global supply chains for CRMs such as lithium, cobalt, nickel and rare earth elements, whose extraction and processing are prone to gross human rights violations and environmental degradation in resource-rich countries. This dependency is relational to the "developmental dissonance" of the Green Deal. Although the Union's internal mechanisms and policy framework advance sustainability and human rights, its external dimensions and actions may perpetuate and reinforce the very harm it seeks to address.

Article 208 TFEU aims at mitigating this tension by obliging the EU and its member states to apply development policy coherence in all their external development projects and not to undermine the development cooperation objectives. However, this provision leaves out some practical solutions to the procedural gaps, especially where the EU's demand for critical minerals has a direct link to ecological harm in partner states and vis-à-vis its policy framework, such as the CSDDD, since it exports its strict requirements to the Global South without consideration of their different vulnerabilities and struggles to

fit into the global economic structure. This legal and moral link illustrates the fragility between the EU Green Deal and its commitments to sustainable development and environmental protection.

4. The Corporate Sustainability Due Diligence Directive (CSDDD) and the Critical Raw Materials Governance

The CSDDD operationalises the EU's sustainability commitments by mandating companies to identify, prevent, and mitigate human rights and environmental risks throughout their "chain of activities." Recitals 24 and 25 of the Directive explicitly extend due diligence to upstream activities, including raw material extraction. This expansion of the directive exports and externalises the Union's regulatory power in sub-Saharan African mining contexts and realities. However, while the directive promotes corporate accountability and due diligence in the supply chain's governance, its strict due diligence requirements assume that all actors in the global supply chain have comparable institutional and economical capacity, technological infrastructure and uniform governance of the mining sectors. This assumption misaligns with the lived economic and political realities in the Sub-Saharan Africa mining sectors. In this region, the extractive industry is very homogeneous, and it is legally and structurally hard to draw a line between goods and services that are purely formal, hence creating compliance challenges and difficulties for companies to conduct comprehensive due diligence (Eskelinen, 2024). The informal mining sector, despite its legal invisibility, contributes half of the African supply of critical minerals, and it supports the livelihood of most of the vulnerable and politically excluded communities (World Bank 2017).

Some scholars highlight that the procedural architecture of the CSDDD, despite its consistence with the EU fundamental principles and its position to close the legal gap on corporate due diligence in international law, faces structural limitations in ensuring that extraterritorial victims have access to justice and equity (Bonfanti and Fasciglione, 2023; Brino, 2018). Relatively, through its reliance on contractual assurance under Recital 46, the Directive, empowers companies to terminate their business relations under Articles 7–11 and to disengage from high-risk suppliers instead of empowering their transitions towards adopting European standards. This contradiction exposes a paradox and a policy gap where the achievement of the European green transition objectives is dependent on critical minerals extracted from the Global South but, at the same time, imposes strict due diligence and compliance measures that most of these developing countries are incapable of meeting (Chenery, 1975; Bobba et al., 2023).

Regarding CRMs such as copper, cobalt, lithium and other rare earth elements, the European-based companies have the power to establish the global standards on what is considered "sustainable" in their supply chains, hence risking excluding African producers from accessing not only the European market directly but also the global supply chains. These structural power asymmetries risk reinforcing dependencies and regulatory hierarchies between Europe and Africa, and it calls into question the ongoing debates over dependency theory in Prebisch (Prebisch, 1950), global value chains (Gereffi et al., 2016) and climate justice (Rawls, 1971).

Therefore, to reconcile this policy gap, the CSDDD should be understood and applied not merely based on technical compliance formalities, but also on understanding its capacity to form a global value chain governance that transforms lives beyond European borders. It should be interpreted in a globally sensitive context that underscores the realities of the sectors across countries and the difficulties that developing countries are facing in meeting their global commitments on human rights and environmental protection.

5. Corporate Sustainability Due Diligence Directive (CSDDD) and the Structural Exclusion of Informal Mining Actors

Sub-Saharan Africa holds a key position in the green European transition as the core supplier for almost all of Europe's needed critical raw materials (World Bank, 2017). However, environmental policies such as the CSDDD structurally exclude the informal miners from legal recognition, and the strict measures in the directive disconnect African lived realities from being part of the EU's policy framework. For instance, the directive under Articles 7–11 requires contractual assurance from suppliers that demonstrates their compliance mechanisms in the extraction, resourcing, processing, etc., and based on those periodical reports, companies are empowered to suspend or terminate business relations if suppliers fail to meet those requirements. Of course, there is no doubt that such measurements would transform the extractive industries and make them more human and that companies would be made accountable; however, many studies have proved that corporate accountability is a "Global North suitable principle", and companies have always "greenwashed" the idea and provided false information in their reports on due diligence in the Global South (Laufer, 2003; De Jong, 2018).

Further still, Recital 46 mandates companies to extend financial and technical support to small and medium-sized enterprises (SMEs) in their supply chains. However, these proposed support mechanisms are exclusively limited to the SME, hence not recognising the potentiality of empowering the informal mining sectors. Similarly, recitals 61 and 68, alongside Articles 15 and 16, establish strict monitoring and reporting measures supported by blockchain verification methods and satellites, among others. These innovative technological measures are good, and they should be used to empower governance measures in the informal mining sector. However, the CSDDD focuses on empowering the already empowered formal sectors, hence continuing to legally and politically exclude the informal sector from visibility and traceability.

From a human right and a global justice perspective, this illegal exclusion raises profound normative questions on the equitability of the CSDDD and whether the EU's policy architecture aligns with its constitutional and international law commitments. This disconnection raises tensions between environmental governance and the lived realities in the Global South, particularly regarding how policies such as the CSDDD could be implemented without externalising green impacts onto already globally marginalised communities.

6. Conclusions

It should be concluded that the EU's green transition must reconceptualise due diligence as a discussional and shared responsibility beyond European borders. This requires the CSDDD to incorporate the common but differentiated responsibilities and respective capabilities (Article 3 (1) of the UNFCCC and Article 10 of the Kyoto Protocol) and to understand that the CRM supply chains are not homogeneously formal and should not legally and solely be evaluated through the EU legal lenses. Relatively, the nature of the CSDDD and all other EU climate policies should be guided by the principle of extraterritorial participatory justice, making the Global South, in particular Sub-Saharan Africa, the center of these policy discourses. These policies should further be transformative and avoid shifting policy impacts to the already vulnerable communities in the Global South.

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ACCESS TO JUSTICE AND HUMAN DIGNITY: A SPECIAL FOCUS ON APPEALS IN PUBLIC PROCUREMENT LAW

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Abstract: *The right to dignity is not merely a theoretical or abstract notion, but a fundamental right that constitutes the basis of all other fundamental rights. This study examines the relationship between the right of access to a court in the field of public procurement and the right to human dignity. The obstacles identified in the system of judicial remedies disproportionately affect small enterprises, social economy actors, or organisations operating in disadvantaged regions – categories that are frequently under-represented in public procurement procedures. Denying these actors real access to justice can lead to legal and economic exclusion, undermining inclusion, equal opportunities and human dignity.*

Key words: *human dignity, access to justice, public procurement, legal remedies, inclusion*

1. Introduction

Public procurement represents the process through which public authorities or contracting entities acquire works, products or services from economic operators in order to meet public needs, in accordance with the principles of transparency, fair competition and the efficient use of public funds.

Human dignity, on the other hand, is a concept that can be analysed from multiple theoretical perspectives. In the law of the European Union, human dignity has been regarded as an *inviolable* value which must be *respected and protected* (Article 1 of the Charter of Fundamental Rights of the European Union). In legal scholarship, dignity has been defined as the *recognition that every human being possesses an intrinsic value that must be respected and protected both by law and by others* (McCrudden, 2008, p. 679), or as a dynamic foundation of justice, which places upon the State the obligation to *ensure effective access to remedies and equal participation in processes that affect individual rights* (Palombella, 2021, p. 124).

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At first sight, public procurement and human dignity may appear to be distinct and even unrelated concepts: the former concerns technical administrative procedures carried out between impersonal legal entities, whereas the latter evokes the intrinsic value of the human person. This opposition, however, is only apparent.

Public procurement procedures are closely linked to the right of access to justice. European norms grant Member States a wide margin of discretion in shaping their systems of remedies, but impose a set of principles aimed at guaranteeing their effectiveness, efficiency and promptness.

Participation in public procurement is not limited to large corporations. An important part of the market is represented by micro-enterprises and small and medium-sized enterprises (SMEs), which, particularly in rural or economically disadvantaged areas, contribute to community development and to the absorption of European funds. For these smaller operators, who often have limited financial capacity and real difficulties in accessing and understanding the digitalised public procurement system, the possibility of making effective use of available remedies is essential. It contributes not only to the protection of their economic interests, but also to the recognition and respect of the dignity of the persons whose work, livelihoods and communities depend on the outcomes of public procurement procedures. This includes entrepreneurs, their employees and, not least, local residents as final beneficiaries of public services.

2. Human Dignity: Normative Content and Relevance in the Contemporary Legal Order

Human dignity is a value that occupies a central place in the framework of fundamental rights. It is recognised in the European legal order as a value that underpins the entire normative system of the protection of the individual. The notion of dignity is the result of a complex historical and philosophical evolution. The modern concept of dignity was first evoked by Kant, who described the human person as the only being capable of moral self-restraint and, therefore, as bearing an intrinsic value that cannot be reduced to utility or instrumental interest. Thus, dignity is not acquired by the human being, nor is it granted by the state, and it does not depend on social validation; it represents an inherent attribute of the human person.

Following the Second World War, as a result of the atrocities committed against millions of people, the need was felt to elaborate international instruments concerning human rights, and dignity became their foundation, as a reaction to the reduction of the human being to the status of a dispensable object. In the Preamble of the Universal Declaration of Human Rights (United Nations, 1948), it is affirmed that *all human beings are born free and equal in dignity and in rights*.

Subsequently, in European Union law, the Charter of Fundamental Rights provides in Article 1 that *human dignity is inviolable* and *must therefore be respected and protected* (Charter of Fundamental Rights of the European Union, 2000, art. 1). The term *inviolable* is understood as excluding the possibility that dignity could be weighed or relativised in relation to competing interests. While, generally, individual rights may be subject to limitations or restrictions under certain conditions, the right to dignity cannot be restricted, negotiated or subjected to any test of proportionality (Court of Justice of the

European Union, 2001, paras. 70–77). Consequently, this formulation places dignity at the apex of the hierarchy of social values.

Similarly, Article 1(3) of the Romanian Constitution defines human dignity as one of the supreme values of the state, alongside other fundamental rights and freedoms, the free development of the human person and justice (Constitution of Romania, art. 1(3)). This constitutional regulation highlights the essential role of dignity in the legal protection system of all other rights: in the absence of this foundation, the remaining rights would represent merely procedural guarantees, lacking substantive justification.

From a legal perspective, dignity may be analysed from three interconnected viewpoints: dignity as a fundamental value, expressing the ethical foundation of the legal order; dignity as a principle of law, determining the interpretative standard governing the definition and application of all other rights and dignity as a subjective right, capable of grounding concrete legal claims and ensuring the protection of the person against degrading treatment, exclusion, or discrimination.

In legal doctrine, it has been emphasised that human dignity is not a univocal or static concept, but rather a guiding thread upon which the entire system of fundamental rights rests. Dignity represents a framework notion that governs the interpretation and harmonisation of all other rights, thus preventing the emptying of meaning of all other concepts concerning fundamental rights (McCrudden, 2008, p. 679). Therefore, dignity is not merely a theoretical notion invoked rhetorically, but must be understood as a dynamic concept articulating the relationship between the individual and public authority.

Thus, dignity essentially requires the recognition of the individual as a distinct subject of law, holder of legitimate interests and beneficiary of full decision-making autonomy, who must be treated with due respect and not reduced to the role of an instrument. This position of the individual presupposes the possibility to participate, on an equal footing, in administrative and judicial processes that affect his or her rights and legitimate interests. Public authorities cannot regard the individual as the object of a technical decision; on the contrary, their actions must reflect the intrinsic value of the human being.

From a legal standpoint, dignity has a dual significance: it is both a constitutional right and a mechanism for establishing minimum standards of protection of the person, such as the prohibition of inhuman or degrading treatment, the protection of personal autonomy, the guarantee of equal recognition, and the prevention of discrimination and unjustified exclusion. Thus, dignity is closely linked to the individual's ability to be heard by public authorities, to freely express his or her position, and to avoid being reduced to a passive object.

Therefore, human dignity is not a mere philosophical ideal, but a concrete legal principle with direct implications for the definition, interpretation, and practical application of fundamental rights. By virtue of its status as a supreme and inviolable value, dignity represents a final criterion of the legitimacy of the exercise of public authority and of the legal recognition of the individual.

3. Access to Justice and the Protection of Vulnerable Categories

Access to justice represents a condition-right which guarantees that all other rights can be exercised effectively. Beyond its procedural function, access to justice has been rightly regarded in legal doctrine as a condition of legality itself, and not merely as one fundamental right among others (Palombella, 2021, p. 122). This character signifies that any restriction which effectively prevents individuals from addressing a court has the potential to affect not only their particular interest, but also the balance between public authority and the individual.

In practice, we observe that the obstacles to access to justice are not distributed equally. They affect especially disadvantaged categories, that is, persons with limited economic and social resources: low-income individuals, employees, local communities, as well as small and medium-sized enterprises (SMEs). The joint FRA–ECtHR Handbook notes that these impediments are not limited to the issue of court fees, but also include the lack of legal representation, excessively short procedural time limits, and practical difficulties in understanding and using complex legal procedures (FRA/ECtHR, 2016, pp. 38–40).

SMEs find themselves in such a structurally vulnerable position: although they are required to comply with the same legal framework as large economic operators, they do not have the same financial, organisational or legal capacity to initiate and sustain litigation. Legal doctrine has argued that the impossibility of access to justice caused by financial constraints transforms the exercise of rights into a privilege conditioned by economic power (Niemann, 2021, pp. 2–3). This vulnerability is even more evident in economically disadvantaged or rural areas, where small local businesses depend on contractual relations with public authorities in order to sustain themselves and support the community.

In Romanian legal doctrine, access to justice has also been regarded as a fundamental principle of the rule of law (Friedmann-Nicolescu, 2017, p. 6). However, the formal recognition of the right of access to a court does not compensate for the absence of its effective exercise, and the transition from formal equality to real equality depends on the capacity of the judicial system to reduce such asymmetries.

We can thus highlight the direct link between access to justice and human dignity. Dignity presupposes the recognition of each person's right to participate in procedures that concern their rights and legitimate interests. When the natural person or even the private legal person is excluded from the real possibility of challenging a decision taken by public authorities, such exclusion causes an indirect but significant infringement of human dignity.

Therefore, even in the field of disputes relating to public procurement, which seemingly concern only economic operators and not natural persons, the dimension of dignity remains present. Behind every economic operator stand concrete individuals: entrepreneurs, employees, and local communities whose living conditions depend on the outcome of procurement procedures. Obstacles or restrictions regarding access to remedies in public procurement directly affect living conditions, financial security and social inclusion, thereby influencing human dignity indirectly, yet profoundly.

4. The System of Remedies in Public Procurement with Special Regard to the Legal Remedies Available

The system of remedies in the field of public procurement is established by Law No. 101/2016, which transposes into domestic legislation Directive 89/665/EEC and Directive 92/13/EEC. The European directives do not oblige the Member States to establish a specific system of judicial remedies, but require, as a matter of principle, that they ensure effective and rapid means of redress which either lead to the suspension of the execution of an unlawful act of the contracting authority or remove such irregularities by annulment, termination, unilateral withdrawal or by obtaining damages. Therefore, in the conception of the European rules, the public procurement procedure goes through two stages, one pre-contractual and the other post-contractual. The first stage concerns the legality of the acts issued by the contracting authorities in the award procedures up to the moment of concluding the public procurement contract, while the second stage concerns the performance of the contract as well as the causes of early termination.

The Romanian legislator has maintained the procedural sequencing found in the European directives and has configured different remedial systems for each of these stages.

It is important to underline that all award procedures are carried out through an electronic public procurement system (SEAP), where the contracting authorities are obliged to initiate, publish and manage the procurement procedures. For example, contracting authorities publish in the SEAP system the contract notices, the award notices, the tender documentation and, likewise, the offers submitted by the economic operators are published in this same electronic system, and the entire correspondence between the participants in the procedures is also carried out there. The electronic system is designed to provide transparency to public procurement procedures, to reduce physical interaction and the administrative burden.

The intention of the legislator was, in principle, to ensure a fair and transparent system, which, to a large extent, has indeed been achieved. However, public procurement procedures are not intended only for economic operators with strong financial capacity. In economically disadvantaged areas or in small localities, the granting of European funds for the development of infrastructure or for improving public services is a means of ensuring a decent standard of living for the population. Therefore, for these disadvantaged areas, it is essential that public procurement procedures are effectively accessible and not only theoretically available.

For these small enterprises and micro-enterprises, the easy access to the SEAP electronic platform is conditioned, among others, by digital literacy, access to IT infrastructure, their administrative capacity and, not least, by the real possibility of understanding and interpreting the documentation uploaded into the system.

We may therefore argue that the technical inequalities affecting these disadvantaged participants have indirect implications for the individuals behind these small entrepreneurs, whether company administrators or simple employees. Through the lack of access to procedures or through the misunderstanding of these procedures, the individuals involved are deprived of the opportunity to access public funds which are beneficial not only to the local community but also to their personal economic well-being.

With regard to the remedial procedures, Article 2 of Law No. 101/2016 provides that any person who considers that a right or a legitimate interest of theirs has been harmed by an act of the contracting authority, or by the failure to resolve a request in due time, may request the intervention of the competent court or of the competent administrative-jurisdictional body. The available remedies include the annulment of the act, the obligation of the contracting authority to issue the requested act or to adopt corrective measures, as well as the recognition of the claimed right or legitimate interest.

In the pre-contractual stage, the legislator granted the interested persons the right to choose between an administrative-jurisdictional procedure and an exclusively judicial one. The administrative-jurisdictional procedure involves filing a complaint before the National Council for the Settlement of Complaints (CNSC), the specialised administrative-jurisdictional body for settling complaints lodged in public procurement procedures. The proceedings before the CNSC are adversarial and conducted with respect for the right of defence (Article 15 of Law No. 101/2016), but they are carried out in written form and only exceptionally, if the Council considers it necessary, may the parties be heard (Article 21 of Law No. 101/2016). Moreover, the procedural time limits for the complaint are very short (3 days, 5 days, 10 days), which means that the complainant must be constantly alert and prepared both technically and legally for any clarifications requested by the Council. Of course, the law allows the parties to be represented by a lawyer or legal adviser (Article 21 para. 2 of Law No. 101/2016), but such representation involves significant costs.

After the decision is issued by the CNSC, the law provides a means of challenge before the court, namely the judicial complaint (*plângerea*). Jurisdiction to settle it lies with the Court of Appeal and, in principle, this is a devolutive appeal in the sense that both grounds of illegality and lack of merits may be invoked (Article 29 of Law No. 101/2016). However, the devolutive character is strictly limited by the fact that new evidence may not be produced other than what was submitted before the Council (Article 31 para. 3 of Law No. 101/2016). This circumstance, together with the same short procedural time limits and the abbreviated procedure for communicating documents, leads us to the question of whether the parties have effective access to a court, given that the court has limited possibilities and powers in resolving the complaint.

It must be emphasised that when filing the administrative-jurisdictional complaint, the complainant must pay a procedural financial security (*cauțiunea*) amounting to approximately 2% of the estimated value of the contract (Article 61^1 of Law No. 101/2016), and for the settlement of the complaint by the court an additional court fee must be paid, which, at the stage of contesting the acts issued in the pre-contractual phase, is modest (50 lei ≈ 10 Euros), the claim being considered non-assessable in money. Currently, the law does not allow the parties to obtain exemptions or instalments for the payment of the security, but it allows, to a limited extent, the possibility of obtaining exemptions or instalments for the court fee (Article 42 para. 2 of Government Emergency Ordinance No. 80/2013).

For the post-contractual stage of public procurement, the legislator configured three parallel procedures. Thus, in the case of disputes concerning damages, as well as those concerning the performance, annulment, nullity, termination, rescission or unilateral

denunciation of contracts, jurisdiction belongs to the administrative litigation sections of the tribunals, sitting in specialised panels for public procurement (Article 53 para. 1 of Law No. 101⁄2016). In the case of the same categories of disputes, except for claims for damages, but arising from causes independent of the contracting authority, jurisdiction belongs to the administrative litigation sections of the tribunals, without the law requiring the specialisation of the panels. Finally, in the case of disputes concerning documents issued by contracting authorities containing information relating to the fulfilment or non-fulfilment of contractual obligations by the economic operator, jurisdiction is again vested in the administrative litigation sections of the tribunals, without the law requiring the specialisation of the panels (Article 53 para. 1^3 of Law No. 101⁄2016).

Regarding the available remedies, the legislator introduced another innovation by providing different appeal routes, without correlation with the two previously regulated procedural paths. Thus, it was established that in the case of disputes concerning contract performance assessment report relating to the performance of the contract, the only remedy is the cassation appeal before the Court of Appeal; whereas, in the case of the other disputes regarding damages, contract performance, nullity and other causes of ineffectiveness, the judgment may be challenged by appeal before the Court of Appeal, again with the requirement that panels be specialised in public procurement.

As we have emphasised in a previous study (Cozgarea and Cătană, 2024), the cassation appeal is **not** an equitable remedy in administrative law disputes where it constitutes the sole remedy provided by law, since the court may examine only strictly defined grounds of illegality and the evidentiary framework is limited exclusively to written documents. Under these circumstances, a system in which the **only** remedy available is the cassation appeal does **not** constitute a genuine second level of jurisdiction and may raise concerns regarding the **effective access to a court**.

In addition to the ambiguous manner of drafting, which created interpretative difficulties for all participants in the procedures – both contracting authorities and economic operators – this legislative configuration also generated non-uniform case-law at the level of the courts, which in turn caused delays in proceedings and affected the rights and legitimate interests of all parties involved.

Interpretative problems arose both with regard to jurisdiction and the routes of appeal. For the full clarification of the normative framework, it should be added that since the entry into force of Law No. 101⁄2016, it has been amended at least five times, the jurisdiction of the courts in disputes relating to the performance of public procurement contracts oscillating between administrative litigation courts and ordinary civil courts, and the applicable remedy oscillating between appeal and cassation appeal.

Divergent case-law emerged in relation to the legal classification of the object of claims, as it was difficult, in the absence of a statutory definition, to determine what the legislator intended by *claims for damages arising from causes independent of the contracting authority*, as well as in relation to the interpretation of the legal provisions governing the available remedies. In terms of subject-matter jurisdiction, courts reached situations of mutual declination of competence between administrative litigation sections and civil sections; and with regard to remedies, in some cases courts granted

appeal routes not provided by law.

This latter situation was caused by differences in the drafting of the same legal article, but in different paragraphs, the legislator using expressions with contradictory legal effect, such as "the decision is subject only to cassation appeal" and "the decision may be challenged by appeal".

Since Article 483 para. 1 and the final sentence of para. 2 of the Code of Civil Procedure provides that decisions given on appeal are subject to cassation appeal, and that decisions given on appeal are not subject to cassation appeal when the law provides *only* the remedy of appeal, some courts opened the path of cassation appeal even when the statute intended to exclude it.

It was therefore necessary for the High Court of Cassation and Justice to intervene, both through the appeal in the interest of the law (RIL) (HCCJ, Decision RIL No. 11/2023), and through regulators of jurisdiction, in order to unify the divergent solutions, establishing jurisdiction in favour of the administrative litigation courts and confirming the exclusive character of the appeal as the remedy in disputes concerning the performance of public procurement contracts (HCCJ, Decision No. 4198/2025).

These oscillations of the legislator have undoubtedly caused delays in public procurement procedures, distancing the Romanian system of remedies from the principles of effectiveness and promptness required by the European directives. Clearly, the right of access to a court has been affected, with implications for the fundamental right to human dignity of the individuals behind the economic operators, for whom the resolution of disputes within an optimal and foreseeable time is essential.

5. Conclusion

The research undertaken in this study demonstrates, in our view, that the necessity of modifying the system of remedies regarding disputes arising from the performance of public procurement contracts is, beyond doubt, a certainty. We understand and acknowledge the need for rapid remedies that restore legality or repair possible damage caused during the award procedures or during the performance of contracts. However, speed and digitalisation do not always mean effectiveness or quality of solutions. What is essential for the majority of economic operators and contracting authorities becomes, for a minority composed of disadvantaged categories of persons, without access to digitalisation or without knowledge in the field of electronic communication, namely small and medium-sized enterprises, micro-enterprises unable to employ specialised personnel in the management of electronic tendering procedures, and natural or legal persons who cannot afford the costs of such litigation, a set of insurmountable obstacles to access to justice. The State must provide support mechanisms by ensuring legal assistance for those who cannot afford the costs, by digital education, and by specialised counselling concerning the procedures.

With regard to the system of remedies, and in particular to the appeal routes, we consider it necessary to amend the legislation in the sense of integrating the public procurement procedure within the system of remedies specific to administrative law.

By analysing the legislation of European states with tradition in the field of public procurement, such as, for example, France, Italy, Spain or Poland, we note that the majority have regulated a system of remedies consisting of two levels of jurisdiction plus a cassation appeal before the supreme court. The exception is Spain, where, in public procurement procedures in which public authorities of the autonomous regions or central authorities act as contracting authorities, against judgments on the merits only a cassation appeal may be lodged before the Supreme Court (Cozgarea, 2025, pp. 33–47).

We therefore conclude that, in comparison with the other legal systems examined, the speed and efficiency of remedial procedures result from the clarity and stability of the legislation, and not from the suppression of available appeal routes. Consequently, whichever direction the legislator chooses in amending Law No. 101/2016, such amendment should ensure clarity, stability and predictability within the system of appeal routes.

Access to justice means, in essence, respect for the right to human dignity, because this intrinsic fundamental value of the person means, among other things, the recognition of the equal worth of each individual, and access to justice is the mechanism that guarantees that this value does not remain merely theoretical.

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FROM LEGAL STATUS TO SOCIAL INCLUSION: THIRD-COUNTRY NATIONALS AND THE RIGHT TO WELFARE IN EUROPE

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Abstract: *This paper examines the evolving relationship between legal status and social inclusion within the European Union, focusing on the judicial dialogue between the CJEU and the Italian Constitutional Court. By analysing the recent case law on Italy's reddito di cittadinanza, it explores how national and supranational courts have redefined TCN's access to welfare through the principle of human dignity. The analysis reveals a gradual shift from a status-based to a rights-based conception of inclusion, where lawful residence and participation in the community replace nationality as the key criterion for social citizenship. The paper concludes that welfare access, grounded in dignity, is emerging as a constitutional entitlement underpinning the rule of law and democratic legitimacy in Europe.*

Key words: *EU law, social inclusion, human dignity, welfare rights, multilevel judicial dialogue*

1. Introduction

The protection of human dignity stands as a cornerstone of both European Union law (Art. 1 CFREU) and the constitutional traditions of its Member States. It represents not only a moral and philosophical value but also a legally binding principle that informs the interpretation and application of fundamental rights within the European legal order. Yet, for third-country nationals (TCNs) legally residing within the EU, access to social welfare benefits remains highly contested. This tension arises from the intersection of national welfare autonomy, supranational guarantees of equality and non-discrimination, and the gradual construction of a common European approach to social inclusion. In the contemporary European context, migration and social policy have become deeply interlinked. The legal status of migrants often determines their degree of access to rights, participation, and inclusion. However, legal status alone does not necessarily translate into social inclusion. The material dimension of human dignity—adequate living conditions, access to basic welfare, and the capacity for social

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participation—depends on the concrete enjoyment of social rights. This paper aims to explore how judicial dialogue contributes to strengthening this material dimension of dignity, focusing on the interaction between the Italian Constitutional Court and the Court of Justice of the European Union (CJEU). The central research question concerns how judicial dialogue between national and European courts shapes the inclusion of third-country nationals in welfare systems. It examines whether recent jurisprudence signals the emergence of a dignity-based approach that transcends formal status distinctions and reaffirms the universality of fundamental rights. Adopting a legal-institutional and interdisciplinary perspective, the paper situates the judicial developments within broader debates on European welfare governance and integration policy. The argument proceeds in six sections. Following this introduction, Section 2 outlines the EU legal framework on welfare and inclusion, highlighting the principles of non-discrimination and equal treatment. Section 3 analyses the concept of human dignity and the role of judicial dialogue in shaping access to welfare. Section 4 focuses on the Italian case of the "reddito di cittadinanza" (citizenship income) and the Constitutional Court's judgment no. 31/2025. Section 5 discusses the broader implications of these rulings for integration policies and welfare governance in Europe. Section 6 concludes with reflections on the potential of a dignity-based model of European social citizenship.

2. The Legal Framework on Welfare and Inclusion in the European Union

2.1. Non-discrimination and equal treatment

EU law has progressively constructed a complex framework of rights for third-country nationals (TCNs), seeking to reconcile the Union's objectives of economic integration with the imperatives of social inclusion. At the constitutional level, the Treaty on the Functioning of the European Union (TFEU) prohibits discrimination on grounds of nationality (Article 18 TFEU) and enshrines equality as a general principle of EU law. Yet, as clarified by both doctrine and jurisprudence, this clause applies only within the context of Union citizenship. It protects EU citizens of one Member State from discriminatory treatment in another Member State, but does not extend to TCNs residing legally within the Union (Manfredi, 2025). The Court of Justice has consistently upheld this restrictive interpretation. In *Hadj Hamed* (C-45/12, EU:C:2011:217, §41), the Court explicitly stated that Article 18 TFEU "as it stands" cannot be applied to a situation concerning a third-country national legally resident in a Member State, since such a person does not enjoy the rights of free movement guaranteed to EU citizens. A similar reasoning has been adopted with respect to Article 21(2) CFREU, which prohibits discrimination on grounds of nationality. In *Andrei Petrov* (T-452/15, EU:T:2017:822, §§38–39), the General Court affirmed that this protection is confined to EU citizens, thereby confirming the dualistic structure of Union citizenship and the exclusion of TCNs from its personal scope. This narrow construction reflects the Union's cautious—if not restrictive—approach to the governance of migration and asylum. It reveals a structural tension within EU constitutionalism: while the EU promotes fundamental rights and social inclusion, the reach of those guarantees remains mediated by nationality and legal

status. As Guild (2020) and Peers (2021) observe, this limitation underscores the incomplete constitutionalisation of migration within EU law, in which TCNs continue to occupy a peripheral position compared to Union citizens. Nonetheless, secondary legislation has progressively tried to fill this normative gap, laying down a sectoral and fragmented set of rights for legally resident TCNs. Directive 2003/109/EC concerning the status of long-term residents remains the cornerstone of this framework. It grants TCNs who have resided legally and continuously within a Member State for at least five years the right to equal treatment with nationals in crucial areas, including access to social security, social assistance, and social protection (Article 11). The Directive reflects an effort to approximate the legal position of long-term residents to that of EU citizens, embedding the principle of non-discrimination into the material sphere of welfare rights.

Directive 2011/98/EU further strengthens this protection by introducing a single application procedure for third-country workers and by ensuring equal treatment with nationals concerning working conditions, pay, and access to social security benefits. The Court of Justice has interpreted these provisions broadly to safeguard the effectiveness of the equal treatment principle. In *INPS v. VR and Others* (C-302/19, EU:C:2020:492), it confirmed that third-country nationals holding single permits must receive the same family allowances as nationals, and that administrative or residence-based obstacles that disproportionately affect them are incompatible with EU law.

However, the implementation of these directives remains fragmented across Member States. The rights granted to TCNs are not absolute: national authorities often impose additional conditions or exclusions that curtail access to welfare schemes. These may take the form of extended residence requirements, integration or language tests, or procedural barriers, which operate as gatekeeping mechanisms limiting the enjoyment of social rights. Such practices reveal a persistent ambivalence in the EU's governance of migration—oscillating between inclusion through law and exclusion through administrative discretion.

The result is a paradox: while EU law formally recognises the equal treatment of TCNs, the exercise of these rights continues to depend heavily on national implementation and judicial enforcement. The combination of restrictive national measures and uneven transposition of EU directives produces a fragmented landscape in which access to welfare varies widely across Member States. This tension between the supranational principle of equality and the sovereignty of national welfare systems remains one of the defining features of the EU's approach to social inclusion.

In this evolving legal architecture, the Court of Justice plays a pivotal role in defining the substantive scope of equality and ensuring its practical effectiveness. Through its case law, the Court has progressively elevated equal treatment from a formal legal guarantee to a substantive standard anchored in human dignity—a development that finds its constitutional complement in the jurisprudence of national constitutional courts, as the following sections will explore.

2.2. National welfare autonomy and the limits of EU competence

Social policy remains primarily a national competence under Article 153 TFEU, and the

organisation of welfare systems is largely determined by each Member State's constitutional traditions and fiscal capacity. The EU's role is complementary, confined to coordinating policies and supporting social cohesion under the European Pillar of Social Rights (EPSR). This institutional division creates an inherent tension: while EU law guarantees equal treatment for certain categories of TCNs, Member States retain discretion over eligibility and conditions for access to benefits (Ferrera, 2005).

This tension is particularly evident in times of economic crisis or rising populist sentiment, when governments tend to restrict welfare access for non-nationals to protect domestic solidarity. As O'Brien (2019) notes, welfare chauvinism has become a recurring theme in several Member States, leading to policies that differentiate between "deserving" and "undeserving" migrants. However, the CJEU has consistently held that such restrictions must comply with the principles of proportionality and non-discrimination. In *Collins v. Secretary of State for Work and Pensions* (C-138/02, EU:C:2004:172), the Court affirmed that Member States may require a "genuine link" between the applicant and the host society when granting jobseekers' benefits, but such requirements must be proportionate and non-arbitrary. In *Vatsouras* and *Koupatantze* (Joined Cases C-22/08 and C-23/08, EU:C:2009:344), it reiterated that economic benefits aimed at facilitating access to the labour market cannot be denied to lawfully resident persons solely on the basis of nationality.

The same reasoning extends to third-country nationals under Directive 2003/109/EC. In *Kamberaj* (C-571/10, EU:C:2012:233), the Court found that the differential treatment of long-term residents in access to social housing funds breached the principle of equal treatment. More recently, in *INPS v. VR and Others* (C-302/19, EU:C:2020:492), the CJEU clarified that national administrative or residence-based conditions that disproportionately restrict access to family allowances for TCNs violate both Directive 2011/98/EU and Article 34 of the Charter of Fundamental Rights. Taken together, these rulings delineate the boundaries of Member States' discretion, confirming that welfare restrictions must pursue legitimate objectives through proportionate and non-discriminatory means.

2.3. The EU Charter of Fundamental Rights and the principle of human dignity

The EU Charter of Fundamental Rights (CFREU) places human dignity at the apex of the Union's constitutional values (Article 1), framing it as both a stand-alone right and the foundation of all other fundamental rights. As noted by Peers et al. (2021), the Charter's architecture reveals an intrinsic link between dignity and social justice: the former cannot be realised without a minimum level of material well-being guaranteed by the latter. The Charter also codifies a set of social rights that are directly relevant to welfare inclusion—such as the right to social and housing assistance (Article 34), the right to health care (Article 35), and the protection of family and children (Articles 7 and 24). Although these rights require national implementation, they serve as interpretative benchmarks guiding both national judges and the Court of Justice of the European Union in assessing the compatibility of national welfare restrictions with EU law.

The combined reading of Articles 1 and 34 CFREU has been central to the Court's reasoning in several landmark cases. In *Kamberaj* (C-571/10, EU:C:2012:233), concerning differential access to housing funds for third-country nationals in Italy, the CJEU explicitly linked the right to equal treatment under Directive 2003/109/EC with the protection of human dignity under the Charter. The Court observed that social assistance schemes designed to guarantee minimum living conditions fall within the scope of EU law and must therefore comply with the Charter. This line of reasoning was later consolidated in *INPS v. VR and Others* (C-302/19, EU:C:2020:492), where the Court held that family allowances cannot be denied to lawfully resident third-country nationals on grounds that would disproportionately undermine their right to social protection.

Other rulings have extended this approach by integrating dignity into the proportionality analysis of welfare restrictions. In *Dano* (C-333/13, EU:C:2014:2358) and *Alimanovic* (C-67/14, EU:C:2015:597), while the Court upheld certain limitations on social assistance for economically inactive EU citizens, it nonetheless acknowledged that exclusionary measures must respect the essence of fundamental rights, particularly human dignity. As Advocate General Wathelet observed in his Opinion in *Alimanovic*, dignity functions as a "safeguard clause" ensuring that the exercise of national discretion does not lead to destitution incompatible with the values of the Union.

From a doctrinal standpoint, this jurisprudence demonstrates the Court's gradual recognition of a material dimension of human dignity (Barak, 2015). Scholars (O'Brien, 2019) have underlined that the Charter provides a normative bridge between social inclusion and equality, transforming the traditional economic logic of free movement into a rights-based approach to welfare. The result is a developing body of case law in which dignity serves not merely as an abstract principle but as a concrete standard for reviewing the proportionality of welfare restrictions.

Ultimately, the Charter's integration into national adjudication has deepened the dialogue between the CJEU and domestic constitutional courts. By invoking human dignity as a shared value, both levels of adjudication contribute to shaping a common European understanding of social justice. This evolution suggests that welfare access, when viewed through the lens of dignity, transcends the dichotomy between national solidarity and EU competence—offering instead a unified, rights-oriented framework for inclusion.

3. Judicial Dialogue and the Protection of Human Dignity

Human dignity is a multifaceted concept that bridges constitutional, moral, and social dimensions. In EU law, it serves as a normative foundation that informs the interpretation of all rights and freedoms. According to the doctrine, dignity in the European context embodies both the intrinsic worth of the individual and the social conditions necessary for self-realisation. This dual dimension—formal and material—makes dignity particularly relevant to welfare inclusion.

The European Court of Justice has invoked dignity in diverse contexts, from data protection (*Digital Rights Ireland*, C-293/12) to social exclusion (*Kamberaj*, C-571/10). The CJEU's reasoning demonstrates that dignity is not a rhetorical ideal but a concrete legal standard guiding proportionality and equality assessments. National constitutional

courts, particularly in Germany, Italy, and Spain, have similarly elevated dignity to the rank of a constitutional principle with direct effect on social policies (Barak, 2015).

In Italy, Article 3(2) of the Constitution links equality with the removal of social and economic barriers that impede the full development of the human person. The Constitutional Court has repeatedly affirmed that human dignity requires the State to ensure the material conditions for a dignified existence (Corte cost., no. 187/2010). This jurisprudence aligns with the CJEU's approach, showing a convergence between national constitutional identity and EU fundamental rights.

Judicial dialogue is the mechanism through which national courts and the CJEU communicate, interpret, and mutually influence the development of law. It operates through preliminary references under Article 267 TFEU, indirect citations, and cross-constitutional reasoning. As Walker (2016) observes, judicial dialogue fosters a form of constitutional pluralism where national and supranational courts engage in an iterative process of mutual accommodation.

In the field of social rights, this dialogue has been instrumental in delineating the boundaries of national discretion. The *Kamberaj* case is emblematic: the CJEU held that national legislation granting preferential access to social benefits to EU citizens over long-term TCNs violated Directive 2003/109/EC and the principle of equal treatment. The Court emphasised that long-term residents enjoy rights derived directly from EU law and that Member States cannot undermine them through discriminatory measures. This judgment not only expanded the legal protection of TCNs but also influenced national courts in interpreting welfare legislation in light of EU principles.

Similarly, in *INPS* (C-302/19, EU:C:2020:492), the CJEU reaffirmed that TCNs holding single permits are entitled to the same family allowances as nationals. The Court clarified that administrative formalities or residence conditions that disproportionately affect TCNs contravene the equal treatment principle. Such jurisprudence reflects a growing judicial consensus that access to welfare is not merely a policy choice but a matter of fundamental rights.

The interplay between the CJEU and national constitutional courts reveals a gradual convergence towards recognising the material dimension of dignity. This evolution is evident in both EU and national contexts. The Italian Constitutional Court's decision no. 194/2019, concerning access to social housing for non-EU residents, drew explicitly on *Kamberaj* to affirm that residence-based exclusions must comply with proportionality and the principle of equality. The Court argued that social assistance schemes aimed at guaranteeing essential living conditions are inherently linked to the protection of dignity.

The same reasoning can be observed in decisions from other Member States. The Spanish Constitutional Court, in judgment STC 17/2013, acknowledged that denying basic welfare to legally resident migrants could undermine the constitutional guarantee of dignity. These developments suggest that judicial dialogue contributes to a transnational understanding of dignity as encompassing both freedom from degradation and entitlement to minimum social support.

4. The Italian Case: The Italian Case: The Citizenship Income, the Ten-Year Residence Requirement and the "Adversarial Dialogue" Between Courts

The Italian "reddito di cittadinanza" (citizenship income) has become a central testing ground for the relationship between national welfare autonomy and supranational guarantees of equality and dignity. Two almost contemporaneous decisions—the CJEU judgment of 29 July 2024 in C.U. and N.D. (Joined Cases C-112/22 and C-223/22, EU:C:2024:674) and the Italian Constitutional Court's judgment no. 31/2025—reflect a complex and at times contentious judicial dialogue over the compatibility of Italy's ten-year residence requirement with EU law and constitutional principles.

The CJEU's 2024 ruling addressed the situation of third-country nationals holding long-term resident status under Directive 2003/109/EC. The Court held that Article 11(1)(d) of the Directive precludes a Member State from conditioning access to a social-assistance benefit such as the "reddito di cittadinanza" on ten years of residence, of which the last two must be continuous. Such a requirement, it reasoned, constitutes indirect discrimination against long-term residents and violates the principle of equal treatment guaranteed by the Directive and Article 34 of the Charter of Fundamental Rights. Echoing its earlier reasoning in *Kamberaj* (C-571/10) and *INPS* (C-302/19), the Court reaffirmed that long-term residence confers a stable legal status entailing access to social benefits under the same conditions as nationals, save for proportionate limitations justified by legitimate objectives.

While the CJEU's judgment appeared categorical, the Italian Constitutional Court soon after addressed a parallel challenge concerning EU citizens' access to the same benefit. In judgment no. 31/2025, it declared the ten-year residence requirement unconstitutional, holding that it violated Articles 3, 38 and 2 of the Constitution and Articles 1 and 34 of the Charter. Yet, in its reasoning, the Constitutional Court did not expressly acknowledge the binding nature of the CJEU's earlier ruling. Instead, it reconstructed the proportionality test autonomously, relying primarily on domestic constitutional principles of equality and solidarity.

This sequence of decisions has been described by commentators (Amalfitano, 2025) as an adversarial judicial dialogue—a moment of tension in the otherwise cooperative constitutional relationship between the two courts. The CJEU's decision was perceived in Rome as a direct intrusion into the core of national welfare discretion, whereas the Constitutional Court's ruling sought to reassert constitutional identity by framing dignity as an internal principle rather than one derived externally from EU law.

However, beneath this apparent conflict lies a deeper normative convergence. Both courts, albeit through distinct methodologies, placed human dignity at the centre of their reasoning. The CJEU derived the right to minimum subsistence from the Charter and from the equal-treatment clause of Directive 2003/109/EC; the Constitutional Court grounded it in the social-state clauses of the Italian Constitution. The resulting dialogue is thus stormy not because the two courts contradict each other, but because they articulate the same constitutional value from different legal vantage points—one supranational and one domestic.

By engaging in a tense exchange rather than a deferential one, the two courts collectively refine the limits of welfare sovereignty and the scope of social rights under EU law. The CJEU's 2024 judgment extends dignity's material dimension to third-country nationals, while the Constitutional Court's 2025 decision affirms its universality within the Italian social model.

Together, these rulings illuminate the evolving nature of multilevel protection of fundamental rights in Europe. The "reddito di cittadinanza" litigation thus stands as a microcosm of the European constitutional landscape: one in which conflict between courts is not a pathology but a mechanism through which shared principles—equality, solidarity, and dignity—are gradually clarified and entrenched.

The judicial dialogue on Italy's citizenship income, however, is far from concluded. At the time of writing, a third preliminary reference is pending before the CJEU, concerning the exclusion of beneficiaries of international protection from access to the same welfare scheme. This new case raises again the question of whether the differential treatment of refugees and subsidiary protection holders is compatible with Article 29 of the Qualification Directive (2011/95/EU), Article 34 of the Charter, and the principle of human dignity. Its outcome will likely complete the triad of *C.U. and N.D.* (TCNs), judgment 31/2025 (EU citizens), and the forthcoming decision on protection holders, thereby providing a comprehensive framework for assessing welfare inclusion across all major categories of legally resident non-nationals in the European Union.

5. From Legal Status to Social Inclusion

Legal status remains a crucial determinant of access to welfare and, consequently, of social inclusion. Yet, as Bosniak (2006) observed, citizenship and rights do not always coincide. In contemporary welfare regimes, legal status alone increasingly fails to guarantee access to social protection, as Member States have introduced additional conditionalities—such as extended residence requirements, integration tests, and proof of economic activity—that disproportionately affect migrants. These measures, though often justified in terms of budgetary sustainability or the need to ensure a "genuine link" with the host society, risk transforming welfare access from a right into a privilege contingent upon performance and duration of stay.

The recent case law on Italy's "reddito di cittadinanza" exemplifies this evolution. Both the CJEU in *C.U. and N.D*. (Joined Cases C-112/22 and C-223/22, 29 July 2024) and the Italian Constitutional Court in judgment no. 31/2025 rejected the ten-year residence requirement as incompatible with the principles of proportionality, equality, and human dignity. Taken together, these decisions signal a gradual shift from a status-based to a rights-based conception of inclusion, whereby the enjoyment of social rights derives from lawful residence and participation in the community rather than from nationality or lengthy residence.

This jurisprudential trend aligns with the broader objectives of the EU's social policy framework, which emphasises equality of opportunities, non-discrimination, and social cohesion (European Commission, 2017). Yet it also exposes a structural tension: even when the law affirms equal treatment, the proliferation of additional conditions—

ranging from administrative compliance to integration indicators—creates new forms of exclusion. This "conditional welfare citizenship" risks eroding the universalist ethos of the European social model.

Judicial developments, therefore, underscore the necessity of integrating legal guarantees with effective policy measures. Welfare inclusion requires not only the removal of discriminatory legal barriers but also the establishment of institutional pathways enabling migrants to access services, employment, and education. The material realisation of dignity depends on this interplay between law and policy. Linguistic, cultural, and socio-economic barriers compound these challenges, limiting migrants' effective enjoyment of social rights. Courts alone cannot dismantle these structures of exclusion, but their decisions set normative benchmarks compelling governments to design more inclusive welfare systems.

The "reddito di cittadinanza" litigation—culminating in *C.U. and N.D*. and judgment 31/2025—illustrates how dignity operates as a bridging principle between EU law and national constitutions, mediating between supranational equality guarantees and domestic solidarity traditions.

This transnational jurisprudence challenges the traditional dichotomy between national welfare sovereignty and EU-level rights protection. It demonstrates that safeguarding human dignity requires cooperation across levels of governance to ensure the material conditions of equality. In doing so, it contributes to the gradual emergence of a European social citizenship grounded not in formal nationality, but in lawful residence, participation, and the shared recognition of human dignity as the cornerstone of social inclusion.

6. Concluding Remarks: Towards a Dignity-Based European Social Citizenship

The protection of human dignity constitutes the normative and constitutional foundation of European integration. In the domain of welfare, dignity bridges the gap between legal status and social inclusion by ensuring that every individual—regardless of nationality—can access the essential conditions for a dignified existence. The judicial dialogue between national constitutional courts and the Court of Justice of the European Union has been instrumental in bringing this principle to life, gradually transforming the boundaries of welfare inclusion in Europe.

The "reddito di cittadinanza" case shows that the protection of human dignity cannot be confined within the borders of nationality, nor subordinated to rigid conditions of residence or integration.

From a broader theoretical standpoint, these developments suggest that the European legal order is moving towards an integrated concept of social citizenship. Such citizenship is defined not by formal membership but by lawful residence, social participation, and mutual recognition across legal orders. It builds on the idea of a shared constitutional space in which dignity, equality, and solidarity operate as common denominators. The challenge for the European social model lies in reconciling the diversity of national welfare regimes with the universality of fundamental rights. The current jurisprudential trajectory points precisely in this direction, towards a post-national conception of welfare inclusion rooted in human dignity.

The challenge now lies in translating this judicial momentum into tangible policy outcomes. Courts can set normative standards and invalidate discriminatory laws, but it is up to political institutions—both at the EU and national levels—to ensure effective implementation. This requires not only legal compliance but also administrative and linguistic accessibility, targeted outreach, and adequate funding mechanisms. Social inclusion, in this sense, is not solely a matter of law but also of governance.

Ultimately, the evolving jurisprudence on welfare access for non-nationals offers a paradigmatic example of how the rule of law, human dignity, and social inclusion are interdependent within the European project. Through their sometimes contentious but mutually reinforcing dialogue, the CJEU and the Constitutional Court of Italy have demonstrated that dignity is not a rhetorical aspiration but a substantive constitutional guarantee.

By grounding welfare access in the principle of dignity, European jurisprudence provides not only a legal framework but also a normative compass for navigating the complex intersection of migration, welfare, and constitutionalism in the twenty-first century. Whether through cooperation or contestation, the courts of Europe are progressively shaping a social constitution of the Union—one that views inclusion not as a concession but as a constitutional duty flowing from the very idea of human dignity.

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THE PROTECTION OF HUMAN DIGNITY THROUGH THE EUROPEAN DIRECTIVE ON CORPORATE SUSTAINABILITY DUE DILIGENCE

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Abstract: *In June 2024, the European Union adopted a directive on corporate sustainability due diligence, which aims to provide a framework for the respect for human rights, including human dignity, and environmental rights by major European companies or those operating in Europe, which are required to institute due diligence protocols in their operational frameworks and transnational value chains with a view to preventing, mitigating and identifying actual and potential negative impacts. To ensure the effectiveness of the system, the European directive on corporate sustainability due diligence provides for the appointment of an independent authority responsible for ensuring compliance with the duty of vigilance and with powers of investigation, inspection, and sanction. Without being exhaustive, the text expressly provides for different types of sanctions in the event of failure to comply with the duty of vigilance.*

Key words: *human rights - duty of care - multinational companies - due diligence – corporate social responsibility (CSR*)

1. Introduction

For several years, civil society, and NGOs in particular, have been denouncing cases of human rights violations committed by transnational corporations, as well as the many restrictions on access to justice for victims, particularly for communities subject to structural discrimination, such as women and indigenous peoples. Various international events have highlighted the difficulties faced by multinational companies in identifying and mitigating risks related to human rights and environmental impacts within their global value chains.

Companies in the European Union operate in a complex environment and, particularly the largest ones, rely on global value chains. Given the large number of suppliers in the European Union and third countries and the overall complexity of value chains, EU companies may encounter difficulties in identifying and mitigating risks related to human rights or environmental impacts in their value chains.

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Building on existing voluntary international standards for responsible business conduct, primarily the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, a growing number of companies in the European Union are using duty of care as a tool to try to prevent violations of human rights and fundamental freedoms, protect people's health and safety, and remedy environmental damage caused by all entities.

However, these voluntary measures taken by certain companies, based on international soft law standards, have proven insufficient, and the voluntary measures implemented by these companies do not seem to have led to large-scale improvements across all sectors. The Rana Plaza tragedy on April 24, 2013, in Bangladesh is a striking example of this and has led international organizations to recommend the adoption of more binding obligations at the international and national levels.

It is at the national level, particularly in Europe, that corporate accountability in terms of human rights and the environment has become more stringent, and France has played a pioneering role in this area by being the first European country to establish a duty of care for companies throughout their value chain (Law No. 2017-399 of March 27, 2017). Some European countries, in particular Germany (Act on Corporate Due Diligence Obligations in supply chains, adopted on 11 June 2021) have followed suit and others are considering doing so, demonstrating a European consensus. With the aim of harmonizing due diligence at the European level and avoiding distortions of competition between Member States, in June 2024 the European Union adopted a directive on corporate sustainability due diligence (Directive (EU) 2024/1760).

This text aims to promote sustainable and responsible behaviour by companies throughout global value chains by requiring states to impose a series of significant obligations on the companies concerned: obligations to prevent and address their negative impacts on human rights and the environment imposed on large European companies, but also on third-party companies operating in the European market; the designation of a supervisory authority; the implementation of a cross-border complaints mechanism; economic and financial sanctions; civil liability to ensure the effectiveness of the system; and, last but not least, dialogue with stakeholders, imposed to varying degrees. Despite the numerous criticisms levelled against it, the directive establishes a particularly ambitious duty of care that will, for the first time in history, impose CSR standards on companies that will extend beyond European borders.

2. The scope of the European duty of care

The adoption of a directive on the duty of care in relation to sustainability has been particularly divisive among European states, with opposition focusing mainly on the scope of the directive. Several countries considered that the proposed directive placed excessive financial, administrative, and legal burdens on small and medium-sized enterprises. The originality of the European text compared to other national standards lies in the fact that the duty of care also affects non-European companies conducting economic activities on European territory.

The text provides for the gradual implementation of rules on the duty of care, which will apply to companies with more than 1,000 employees and a global net turnover of more than €450 million, as well as companies from third countries with a turnover in the EU of more than €450 million.

Another distinctive feature of the text is that the activities concerned are not only those of the company, but also those of its subsidiaries and business partners in the chains of activities of these companies, in particular subcontractors and suppliers.

Although SMEs are not directly targeted by the text, it should be noted that small businesses operating in the value chains of covered companies around the world will be affected due to the contractual requirements imposed on them by their clients, who are themselves subject to the duty of care. Nevertheless, the directive protects SMEs by providing support and assistance mechanisms that have the merit of reducing the requirements mentioned above.

3. The content of the European duty of care

The European directive requires companies to adopt and effectively implement all necessary measures to prevent, mitigate risks, and put an end to human rights violations and environmental damage caused by their entire group and value chain.

3.1. Implementation of due diligence measures

The Due Diligence Directive requires affected companies to establish due diligence protocols within their operational frameworks and transnational value chains in order to prevent, mitigate, and identify actual and potential negative impacts. The text specifically targets the areas to be addressed: forced labor, exploitation of workers, child labor, fair and favorable working conditions, decent and adequate wages, unequal treatment in employment and the right to freedom of association, and environmental issues such as emissions, deforestation, pollution, waste and hazardous chemicals management, ozone layer protection, pollution, mercury use, and water use.

The main due diligence obligations set out in the directive are as follows:

3.1.1. *Development of a due diligence policy*

The directive requires companies to incorporate due diligence into their internal policies and governance. As such, Member States will have to ensure that companies are transparent. Companies will be required to describe their long-term approach to this issue and their internal processes, and to publish their code of conduct on an annual basis. The choice of a code of conduct as a basis for the rules and principles to be followed in terms of due diligence is questionable insofar as these are only flexible standards.

3.1.2. ***Identification of actual or potential adverse impacts on human rights and the environment***

The companies concerned will also have to put in place appropriate measures to identify and assess the actual or potential negative impacts arising from their own activities or those of their subsidiaries and, where linked to their business chains, those of their business partners.

3.1.3. ***A ranking of the actual and potential negative impacts identified***

When it is not possible to prevent, mitigate, eliminate, or minimize all identified adverse impacts simultaneously and in their entirety, companies must prioritize the identified adverse impacts for the purposes of complying with obligations to prevent potential adverse impacts and eliminate actual adverse impacts.

3.1.4. ***Prevention and reduction of potential negative impacts through a prevention plan***

The companies concerned will also have to put in place appropriate measures to prevent or, where prevention is not possible or not immediately possible, to adequately mitigate potential negative impacts on human rights and the environment. To this end, a prevention plan must be drawn up, in consultation with the relevant stakeholders, when complex and specific measures are necessary to prevent or reduce potential negative impacts. Companies must ensure, through contractual clauses, that partners with whom they have established direct business relationships comply with the code of conduct and, where applicable, the prevention plan. However, the text is pragmatic in that it considers cases where a company is unlikely to prevent or minimize the risks of the aforementioned infringements. It then provides Member States with guidelines for requiring companies to suspend or terminate a business relationship.

3.1.5. ***Neutralizing or reducing actual negative impacts through a corrective action plan***

Companies will also have to put an end to actual negative impacts, or if this is impossible, minimize their extent, and pay financial compensation to victims. If they are unable to put an immediate end to the negative impact, companies will have to draw up a corrective action plan specifying deadlines for action and qualitative and quantitative indicators to measure improvement. The mechanism is similar to that provided for preventing potential negative impacts: use of contractual tools to verify that direct business partners comply with the code of conduct or corrective action plan, use of independent third parties to verify compliance, making the necessary investments, providing financial support to SMEs, concluding a contract with a partner in an indirect relationship, not establishing new relationships with a partner, temporarily suspending business relationships with a partner, and terminating the business relationship with regard to the activities concerned in the event of a serious negative impact.

3.1.6. ***Compensation for actual negative impacts***

The directive expressly states that a company that has caused, alone or jointly, a real

negative impact must remedy it. In the event that the real negative impact is caused solely by the company's business partner, the company may take the initiative, on a voluntary basis, to remedy it. It may also put pressure on the business partner causing the negative impact to remedy it.

3.1.7. The implementation of an alert procedure

The directive stipulates that companies must also establish a procedure for reporting actual or potential negative impacts on human rights and the environment. This procedure would be widely accessible, namely to persons affected by a negative impact, trade unions and other representatives of persons working in the value chain, and civil society organizations active in areas related to the value chain concerned.

3.1.8. Monitoring the effectiveness of policy and vigilance measures

Companies subject to the duty of vigilance must be able to regularly assess their internal systems. They must therefore put in place procedures for regularly assessing their own situation, that of their subsidiaries, and their business relationships, in order to monitor the effectiveness of identifying, preventing, mitigating, eliminating, and minimizing adverse impacts on human rights and the environment. These assessments must be carried out annually and whenever there are reasonable grounds to believe that new significant risks related to these negative impacts may arise. The results of these assessments will lead to an update of the duty of care policy.

3.2. A requirement to communicate on the duty of care

The European directive stipulates that the companies concerned must publish an annual statement on their website in a language commonly used in international business. Details on the content and criteria applicable to reporting requirements, specifying information on the description of the duty of care, potential and actual adverse impacts, and measures taken in response to them, will be set out in a delegated act.

3.3. The need for dialogue with stakeholders

In a fairly innovative move, the directive requires dialogue and consultation with stakeholders at all stages of the due diligence process. This provision therefore makes consultation with potentially affected stakeholders a condition for the effective implementation of the duty of care.

3.4. Support for companies subject to the European duty of care

The European directive also provides for accompanying measures for the companies concerned, but also for SMEs indirectly affected by the duty of care.

In order to help companies fulfill their duty of care, the directive provides for the adoption of guidelines on voluntary standard contractual clauses.

In addition, in order to support companies in applying all of these provisions, the

directive envisages publishing guidelines in consultation with Member States, stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency and, where appropriate, international bodies with specific expertise.

In order to support the various companies, their business partners, and stakeholders, Member States will need to set up dedicated websites, platforms, or portals. In this regard, particular attention is being paid to SMEs, as they may be affected by due diligence measures if they are part of a company's value chain. Collaboration with stakeholders would be particularly beneficial, as they could help companies meet their obligations by providing them with significant expertise.

3.5. The fight against climate change

The directive also introduces an obligation for companies subject to the duty of care to adopt and implement, to the best of their ability, a climate transition plan to ensure that their business model and strategy are compatible with limiting global warming to 1.5°C in accordance with the Paris Agreement. The text also requires that the transition plan be updated annually and contain a description of the progress made by the company in achieving its objectives.

4. A preventive control device

In order to ensure the effectiveness of the mechanism, the European directive on corporate sustainability due diligence requires each Member State to designate an independent authority responsible for ensuring compliance with due diligence obligations and equipped with powers of investigation, inspection and sanction.

For companies from third countries, the competent supervisory authority will be that of the Member State in which the company has a branch office. If the company does not have a branch office in a Member State or has branches in several Member States, the supervisory authority will be that in which the company has achieved the majority of its turnover. It should be noted that this provision will be complicated to implement and will complicate monitoring of supervision, as the Member State in which the company has achieved the said turnover may vary from one financial year to another.

This supervisory authority must be independent and have the resources and investigative powers necessary to carry out its mission. It will have broad investigative powers and the authority to conduct on-site inspections. It will have the option of doing so on its own initiative, and therefore of taking up cases on its own motion, or following reports made by persons who have legitimate grounds to believe that a company may have committed a breach. If the authority finds that a company is not complying with the provisions of the law, it may grant the company a period of time to take corrective measures, which would not preclude administrative sanctions and civil liability. It may also order provisional measures to avoid the risk of serious and irreparable harm. Finally, it could order any measure aimed at putting an end to the breach and impose financial penalties based on turnover. The text also stipulates that any decision by the

supervisory authority to penalize a breach of the duty of vigilance will be published.

A European network of supervisory authorities, composed of representatives of national authorities, will be established. Its purpose will be to facilitate cooperation between supervisory authorities and coordination of regulatory, investigative, sanctioning, and supervisory practices.

5. Penalties incurred for failure to exercise due diligence

The European directive on corporate sustainability due diligence requires Member States to ensure that companies comply with their new obligations. According to a well-known principle in European law, the penalties provided for must be "effective, proportionate, and dissuasive." It provides for various types of penalties for breaches of due diligence.

The directive provides for the possibility for supervisory authorities to impose financial penalties of up to 5% of their global net turnover. However, this is not an obligation and it will be up to Member States to set the rules relating to these penalties.

At the same time, the directive confers particularly stringent administrative powers on the supervisory authority, in that it empowers it to impose provisional measures designed to prevent a risk of serious and irreparable damage, which may include the temporary suspension of the parent company's activities.

The directive also aims to hold companies liable in the event of a breach of their obligations. In order to ensure the effectiveness of the mechanism, the directive provides that in the event of non-compliance with the prescribed measures (intentional misconduct or negligence) and where, as a result of such non-compliance, a negative impact has not been identified, prevented, eliminated, or mitigated and has caused damage, victims may bring civil liability proceedings against the companies. It thus enables victims of such abuses, both inside and outside the EU, to access justice and obtain redress. However, liability proceedings require victims to prove intentional misconduct or negligence in order to establish a breach.

This liability may be incurred in the event of damage related to the activities of the company itself, but also of a subsidiary and its business partners. However, the company will not be held liable if the damage was caused solely by a business partner in its chain of activity. It must therefore have contributed to and participated in the damage in order to be held liable. The text specifies that these rules will not prevent the application of national regimes with stricter provisions.

However, the directive does not provide for the possibility of bringing a case before a judge before any damage has occurred, in order to require a company to comply with its prevention obligations. In practice, this role is entrusted to the supervisory authority.

6. A challenge to the European duty of care

In recent months, various European regulations on Corporate Social Responsibility (CSR) have been the subject of fierce criticism, accused in particular of hampering the competitiveness of European companies. The main governments of the EU Member

States have therefore called for the European directive on the duty of care to be relaxed and simplified. Member States were required to transpose it by July 26, 2026, but a directive dated April 14, 2025(4), known as "Stop the clock," ultimately postponed the deadline for transposing the directive and its first phase of implementation by one year to July 26, 2027. More recently, the European Parliament adopted drastic simplification measures for the European duty of care directive, in a vote on November 13, 2025, which raise the threshold for applicability of the directive to 5,000 employees and €1.5 billion in turnover. This means that tens of thousands of companies will no longer be subject to European obligations. In addition, Parliament is abolishing the harmonized civil liability regime at the European Union level and making financial penalties optional. Trilateral negotiations between Parliament, the Council, and the Commission began.

7. Conclusions

The adoption of the duty of care for multinational companies by member states sent a strong message, recognizing the need to shift the governance model of European companies towards greater sustainability, particularly with a view to protecting human dignity. Faced with this weakening of the regulatory framework for CSR, many players from the economic and financial world are nevertheless mobilizing to defend this regulatory change, which is considered essential to the financial stability, transparency, and competitiveness of the European Union. Wait and see!

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HUMAN DIGNITY AS A PRINCIPLE OF INTERPRETATION OF EUROPEAN UNION LAW

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Abstract: *Referred to by legal scholars as the "mother right", human dignity is enshrined in European Union law as a fundamental value (Article 2 of the TEU), as a fundamental right (Article 1 of the Charter of Fundamental Rights of the EU) or as the "real basis of fundamental rights" (Explanations to the Charter), as well as a "general principle of law" (Omega case). From a positivist-normative perspective – one that permeates contemporary judicial practice – we believe, however, that human dignity should be valued as a "principle of interpretation", reflecting its inexhaustible hermeneutic potential, which judges can routinely employ in the rendering of justice. In this way, the Court would simply be placing human beings at the centre of all EU activities.*

Key words: *human dignity, principle of legal interpretation, Court of Justice of the European Union*

1. Introduction

It is not uncommon for the judicial practice of the highest national and supranational courts to reflect a particular philosophical current or, at least, a general conception of the world and of human existence. Such is the case, for instance, with the concept of evolutionary interpretation embraced by the European Court of Human Rights (hereinafter *ECtHR*), whose theoretical roots can be traced to the pre-Socratic philosopher Heraclitus of Ephesus, who held that everything is in a state of constant change – *panta rhei* – "no one ever steps in the same river twice, for it is not the same river and he is not the same man". Conversely, the hypothesis of American originalism may be seen as grounded in the opposing view of Parmenides of Elea, who argued that "the human being is eternal, immutable, and indivisible" and that "change is only an illusion of the senses".

However, perhaps none of the classical philosophical ideas that influenced later legal concepts is more relevant and topical than Kant's formula, which obliges us to regard "man as an end in himself, and never merely as a means". Gradually but decisively, this philosophical idea has begun to underpin all modern fundamental rights and constitutes

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the birth of human dignity as a hermeneutic principle in the case law of the major courts. By invoking the concept of human dignity in the reasoning behind their judicial decisions, the courts attribute a normative-interpretative value to it.

In what follows, we will seek to identify in the case law of the Court of Justice of the European Union (hereinafter *CJEU* or *Court of Justice*) the main approaches to the concept of human dignity as a principle of legal interpretation.

2. Human dignity in early national and international regulations

As with any fundamental notion, the idea preceded the term. While, over the centuries, treating human beings with respect – simply because they belong to the human species – has been based either on religious beliefs or secular reasoning, the term *dignitas* appears in legal history for the first time in *the Corpus Juris Civilis,* with the meaning of high rank or office. In Roman law texts, dignity did not yet refer to the intrinsic value of human beings, but was associated with social status, public position and the honour that derived from them.

However, the modern concept of human dignity differs significantly from its archaic meaning. In relation to its original meaning, only the idea of the special value of the person thus designated has been retained. As shown in doctrine (Daly, 2021, pp. 11–12), from a contemporary perspective, dignity no longer designates a privilege reserved for an elite, but an *attribute inherent to all human beings.* Moreover, dignity plays an *equalising role,* so that every individual enjoys the same rights and is subject to the same obligations under the law.

Thus, over the centuries, the meaning of the term *dignity* has shifted from *dignitas* (social rank) to *modern human dignity* (an egalitarian and justiciable principle).

In its contemporary evolution, the legal recognition of human dignity began with the explicit inclusion of the term in the main international instruments adopted after the Second World War. A natural reaction to the atrocities committed during that period, the 1945 Charter of the United Nations reaffirms, in its preamble, “faith in the dignity and worth of the human person”. Subsequently, the Universal Declaration of Human Rights of 10 December 1948 enshrines dignity as the foundation of freedom, justice and peace in the world, emphasising its “inherent dignity of all members of the human family”.

On this basis, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, reinforced the idea that “human rights derive from the inherent dignity of the human person”. These instruments translated the principle into concrete norms: the humane treatment of persons deprived of their liberty (Article 10 of the ICCPR) and the role of education in the development of personality and a sense of dignity (Article 13 of the ICESCR).

A decisive step in affirming dignity as a constitutional principle was taken by the German Basic Law of 1949, which proclaims in Article 1 that "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority." This wording undoubtedly reflects the desire of post-war German society to distance itself from the abuses of the Nazi regime and to place human dignity at the centre of the constitutional order.

Interestingly, despite the authoritarian nature of communist regimes, the notion of dignity was nevertheless incorporated into their fundamental laws. For example, Article 13 of the 1965 Romanian Constitution stated that "ensuring human freedom and dignity, the multilateral affirmation of human personality" was the goal of "all state activity".

This raises the question: is "human dignity" a purely rhetorical concept devoid of normative content, or is it a legal principle with effective force and current relevance? Doctrinal debates have attempted to provide some answers in this regard.

3. Human Dignity in Modern Legal Doctrine

The primordial and fundamental nature of human dignity in the legal order is well captured by Hannah Arendt's famous metaphor, which defined dignity as "the right to have rights" (Arendt, 1951, p. 298). From this perspective, dignity is not just an abstract principle, but the foundation on which the entire architecture of human rights rests. It expresses the recognition that every person, by virtue of their mere membership in humanity, is entitled to rights that must be respected and protected by the state and the international community.

The first major division of the concept of human dignity can be found in the work of George Kateb, who distinguishes between individual dignity – *status* (the equality of all persons) and the dignity of the human species – *stature* (the unique status of humanity in nature). For Kateb, "human dignity is an existential value. To recognise it means to recognise the truth of the identity of the person and of the species" (Kateb, 2011, pp. 28–113; 174–218). Ultimately, he advocates for a *democratic conception of dignity*, one that finds value not only in exceptional human achievements or genius, but also in ordinary existence — in the everyday acts of caring for nature and for others (Kateb, 2011, pp. 177–218).

Contemporary authors continue to compete in metaphorically describing human dignity. Thus, Aharon Barak, former president of the Supreme Court of Israel, called human dignity the "mother right" (Barak, 2014), while Sam Moyne emphasised that "human rights did not begin as claims against the state, but rather as part of the very definition of a state" (Moyne, 2010, pp. 26, 27).

But are all these doctrinal statements merely formal rhetorical exercises, or can the concept of dignity be genuinely transposed and effectively operationalised as a legal principle within the system of justice?

For Ronald Dworkin, "democracy can only exist where human dignity is respected", as it represents the moral foundation of the legal and political order (Dworkin, 2011, p. 320). However, the same author warns of the risk that the notion of dignity may lose its substance, becoming "flabby from overuse" in legal and political discourse (Dworkin, 2011, p. 3). In a similar vein, Stéphanie Hennette-Vauchez draws attention to the contemporary "infatuation" with the right to dignity, a phenomenon that risks emptying the concept of real content (Hennette-Vauchez, 2007). Moreover, as Izhak Englard notes, the abusive use of the term simply because it is "a very fashionable concept" can be just as harmful as its total absence from legal discourse (Englard, 2000, pp. 1903, 1923).

Therefore, if human dignity is not just a "unicorn" in legal terms, as James Ingram ironically puts it, but rather a "mule" – not only because it exists, but because it is capable

of functioning – it remains an open question for the law (Ingram, 2008, p. 402). However, regardless of what the future holds, it can be said, in full agreement with Andrea Pin, that the normative value of dignity has become "the springboard for further intellectual explorations of dignity, making the concept a good vehicle for legal change" (Pin, 2022, p. 71).

Moreover, for Jürgen Habermas, human dignity is not just a vague formula, but constitutes "the moral source of all fundamental rights". In his view, human rights carry a structural tension: they are universal in content but national in application. Habermas calls this tension a "realistic utopia" – "Human rights constitute a realistic utopia insofar as... they anchor the ideal of a just society in the institutions of constitutional states themselves" (Habermas, 2010, p. 476). Finally, Habermas discovers a "heuristic" function in human dignity, given that new rights arise from historical experiences of humiliation and degradation – "The experience of the violation of human dignity has performed, and can still perform, an inventive function in many cases" (Habermas, 2010, p. 467).

4. Human Dignity in European Union law

In European Union law, human dignity is enshrined in both primary and secondary legislation.

In primary legislation, human dignity appears both as *a fundamental value* and as *a subjective right*. Firstly, it is listed as a fundamental value in Article 2 of the Treaty on the European Union (hereinafter *TEU*), as amended by the Treaty of Lisbon, alongside freedom, democracy, equality, the rule of law and respect for human rights. Furthermore, the concept of human dignity influences the Union's external action, according to Article 21 TEU, and Article 49 TEU imposes on candidate countries the obligation to respect and promote these values, making the need to respect human dignity an effective criterion for accession to the Union.

Secondly, human dignity is enshrined as a fundamental right in Article 1 of the Charter of Fundamental Rights of the European Union (hereinafter *CFREU*), which states that "Human dignity is inviolable. It must be respected and protected". The preamble to the Charter also emphasises that the Union "is founded on the indivisible, universal values of human dignity, equality and solidarity". The placement of this article at the beginning of the Charter is no coincidence: the explanations relating to the Charter describe it as "the real basis of all fundamental rights".

Beyond primary legislation, secondary legislation of the European Union increasingly refers to human dignity, either as a general principle of interpretation or as a specific objective of protection. For example, in the field of personal data protection, Regulation (EU) 2016/679 (GDPR) states that "the processing of personal data should serve the person (...), respect the freedoms and dignity of the person".

As can be seen, human dignity is enshrined in EU law both as a legal value and as a subjective right. Indeed, as Erin Daly notes, human dignity has a dual nature, reflecting both a *value* and a *right*. As *a value,* it cannot be interpreted restrictively or ignored, expressing the recognition of distinctly human traits – reason, empathy, the capacity for self-development. As *a right,* dignity underpins the individual's claims against the state

and imposes on the latter the obligation to respect what is unique in human beings. From this perspective, fundamental rights can be seen as concrete manifestations of the principle of dignity, while the value of dignity is shaped and clarified through the practical application of these rights. In fact, human dignity viewed as a value and as a right represents a relationship between two powerful ideas. When these two ideas come together, "the effect is revolutionary" (Daly, 2021, p. IX).

5. Human dignity in the case law of the Court of Justice of the European Union

In order to approach any legal concept – especially one with multiple meanings and complex content, such as human dignity – it is imperative to establish a conceptual and methodological framework for analysis.

In this regard, we will follow the distinction proposed by Erin Daly in her work *Dignity Rights*, based on constitutional case law. The author shows that human dignity can be analysed both from the perspective *of the concrete object of protection* and from that of *its normative function*, thus reflecting its dual nature as *a value* and as *a right*. From this latter perspective, three distinct directions can be identified: dignity as *autonomy,* in the sense of the individual's freedom to develop their own life plan and to self-determine; dignity as *material well-being,* implying certain concrete material conditions of life; and dignity as *physical and moral integrity,* seen as an intangible value of the human being, protecting its integrity in all aspects. In short, these dimensions have been summarised in three maxims: "living as one wishes", "living well" and "living without humiliation". Although interdependent, addressing them separately facilitates a more nuanced understanding of the concept and a more precise application in practice (Daly, 2021, p. 26).

In the following, we will identify these three dimensions in the case law of the Court of Justice of the European Union.

5.1. Human dignity as the right to self-determination – living as one wishes

The most famous case concerning human dignity in the case law of the Court of Justice of the European Union is undoubtedly *Omega Spielhallen GmbH* (C-36/02). This case concerns the interpretation of the concept of human dignity from the perspective of a community's right to protect its fundamental values, particularly when these reflect the constitutional identity of the Member State. In its judgment of 14 October 2004 in the *Omega* case*,* the Court established human dignity as a "general principle of law" which "has a particular status as an independent fundamental right" (para. 34). In this regard, the Court recognised that prohibiting a commercial activity that contravenes the national conception of human dignity – in this case, laser tag games simulating the killing of a person – may be justified even in the context of the freedom to provide services. In this regard, the judgment refers to the concept of dignity as a collective form of autonomy and self-determination, through which a society asserts its right to protect the moral values it considers essential. This collective dimension of dignity can be transposed, at the individual level, into the right of each person to live their life according to their own convictions, which reflects the first of the three facets identified above: dignity as autonomy.

The *Omega* case not only introduces a profoundly human value, such as dignity, into a legal order dominated by economic considerations, but also highlights the European court's effort to ensure compatibility between different European cultural and constitutional traditions, without prejudice to the identity of any of them. At the same time, the court's intention to avoid any cultural offence can be discerned, respecting the moral sensibilities of the state importing the product in question (i.e. the *laser tag* game), without, however, ignoring the cultural context of the product's country of origin.

From a purely subjective perspective, perhaps the most illustrative case is the one that established, without actually naming it as such, the "right to be forgotten". In its judgment of 13 May 2014, delivered in the case of *Google Spain and Google Inc.* (C-131/12), the Court of Justice ruled, on the basis of Articles 7 and 8 of the Charter of Fundamental Rights, that Mario Costeja González – the applicant in the main proceedings, as the person concerned by publicly available information online – has the right to request that this information no longer be accessible to the general public through search engine results. This solution directly expresses the dimension of human dignity as autonomy, understood as the freedom of the individual to construct their own identity and to decide how it is perceived in the public sphere. Control over personal information thus becomes a modern form of self-determination, through which dignity acquires concrete content in the digital age.

Finally, the issue of human dignity could not be ignored in the situation of asylum seekers. In the joined cases *A. B., C.* (C-148/13, C-149/13 and C-150/13), the Court was confronted with refugees' claims that they would be persecuted on grounds of sexual orientation if deported, and had to assess whether and to what extent EU Member States could verify those claims without degrading the applicants' dignity. AG Sharpston emphasised that human dignity prohibits the use of intrusive means to detect a person's sexuality: applicants could not be "required to support their claims for refugee status in a manner that undermines their dignity or personal integrity" (para. 52). The CJEU followed the AG's opinion, placing even greater emphasis on human dignity. It formulated an extended use of dignity, both by excluding certain options (it excluded tests that require the claimant to perform acts of a sexual nature) and by insisting on an individualised assessment of the asylum seeker, in the sense of examining in concrete terms “the individual situation and personal circumstances of the applicant” (para. 57).

The CJEU's approach in cases concerning human dignity under this dimension of self-determination is clearly Kantian in inspiration. This approach essentially reflects the Court's respect both for the value of human dignity in itself, as enshrined in Article 2 TEU and Article 1 CDFEU, and for human dignity viewed in relation to the constitutional identity of the Member States, protected by Article 4(2) TEU. Through its rulings, the Court appears to grant Member States a certain margin of appreciation in defining and protecting their own fundamental values, as long as the exercise of this right does not contravene the general principles and objectives of the Union. In this way, cases such as *Omega* are no longer limited to their direct subject matter (*e.g.,* the freedom to provide services and its limits), but extend the Court's reasoning to how human dignity can function as a bridge between the European legal order and national traditions, seeking to reconcile the universalism of fundamental rights with the cultural and constitutional pluralism of the Union.

5.2. Human dignity as a right to well-being – living well

While in the *Omega* case human dignity is understood in the sense of autonomy and self-determination, another line of case law of the Court of Justice concerns its *material dimension*, closely linked to the concrete living conditions of the individual. From this perspective, dignity becomes the fundamental benchmark for the right to a decent standard of living and effective social protection within the Union. Koji Teraya has highlighted the importance of material well-being in a more mundane sense, asking rhetorically, "what good is freedom to a starving man?" (Teraya, 2001, p. 918).

For example, in the *Brey* case (C-140/12), the Court examined the compatibility of restrictions imposed by a Member State on the granting of social benefits to citizens of other Member States with the principle of free movement of persons. The European court emphasised that measures that would deprive a person of the minimum means of subsistence would be contrary not only to Union law but also to human dignity, as they would deny the individual the possibility of leading a life in accordance with his or her nature. In this regard, the CJEU stated that "the mere fact that a national of a Member State receives social assistance is not sufficient to show that he constitutes an unreasonable burden on the social assistance system of the host Member State" (para. 75).

However, it is interesting to note that this approach to dignity does not unilaterally protect vulnerable persons. As has been said, dignity can function as a "double-edged sword" (Pin, 2022, p. 62), as illustrated by the Court's reasoning in the landmark Dano case (C-333/13). The case concerned Romanian citizens who had settled in Germany for a long period of time. They benefited from the protection of the German social network as EU citizens, never sought employment, and subsequently requested the higher level of social protection afforded to other nationals under national law, which, under EU citizenship law, should have been extended to them as well. The German institutions refused to grant them these additional benefits, and a legal dispute ensued. The CJEU upheld Germany's refusal to grant additional social protection to EU citizens. In the CJEU's view, the fact that the applicants did not participate in the economic life of the country justified the difference in treatment between them and other EU residents. Since they were already granted basic protection, their dignity was preserved. But obliging countries to do more for EU citizens who do not wish to enter the labour market would have created "an unreasonable burden on the social assistance system of the host Member State" (para. 74). In other words, the CJEU saw the concept of dignity not only as a means of equalisation, but also as a *limit* beyond which the diversification of social services was not permitted.

This material dimension is naturally complemented by the third aspect of the concept – dignity as physical and moral integrity, which aims to protect the person from attacks on their physical and moral being.

5.3. Human dignity as the right to physical and moral integrity – living without humiliation

The third dimension of human dignity – dignity as physical and moral integrity –

concerns the protection of the person against any harm to their physical, moral or existential being. This is the most sensitive core of the concept, in which dignity is identified with the intrinsic value of human life itself.

In the case law of the Court of Justice, this perspective is illustrated in particular by cases concerning ethical or bioethical issues, where the boundary between scientific progress and the protection of the individual becomes fragile. Thus, in the *Brüstle* case (C-34/10), the Court ruled that the concept of "human embryo" in EU law "must be understood in a wide sense" in order to ensure "respect for human dignity" (para. 34), so that the "use of biological material originating from humans must be consistent with regard for fundamental rights and, in particular, the dignity of the person" (para. 32), in which context "all processes the use of which offends against human dignity are also excluded from patentability" (para. 33).

However, the best-known area in which the Court of Justice has firmly affirmed the dimension of dignity as physical and moral integrity is the provision of *detention conditions*. In cases such as *Aranyosi and Căldăraru* (joined cases C-404/15 and C-659/15), the Court ruled that the execution of a European arrest warrant may be suspended if there is a real risk that the requested person will be subjected to degrading treatment in the issuing state, contrary to Article 4 of the Charter. Thus, the CJEU emphasised that "as regards the prohibition of inhuman or degrading treatment or punishment, laid down in Article 4 of the Charter, that prohibition is absolute in that it is closely linked to respect for human dignity, the subject of Article 1 of the Charter" (para. 85). Thus, the Court recognised that human dignity imposes absolute limits on judicial cooperation in criminal matters when the individual's freedom would be exercised in an environment incompatible with respect for human beings. Therefore, in the context of detention conditions, the Court has transformed human dignity from an abstract principle into a practical criterion of protection, capable of limiting the exercise of state power even in areas of sovereign competence, such as the enforcement of criminal penalties.

Finally, perhaps the most eloquent example of the Court of Justice's case law on human dignity, even without expressly referring to it, is a recent case concerning refugees, known as *Kinsa* (C 460/23). In the *Kinsa* case*,* in its Grand Chamber judgment of 3 June 2025, the CJEU ruled that the EU law on refugee protection precludes criminal liability for the offence of facilitating the illegal crossing of the border by a mother who enters the territory of a Member State illegally, accompanied by her minor children in her care, in which context she submits an application for refugee protection on the grounds that she is threatened with death by her former partner in her country of origin. Thus, despite the express wording of Article 1(1)(a) of Directive 2002/90, which requires Member States without distinction to criminalise the conduct of facilitating illegal border crossing, the CJEU held that this is not applicable in such a case, where the person who has custody of the minors is themselves crossing the border illegally with them. In such a case, viewed from the perspective of human dignity, the Court held that the refugee had done nothing more than protect the right to life and integrity of the minors under his care (human dignity in terms of physical and moral integrity), their right to well-being by ensuring material living conditions (human dignity in terms of ensuring minimum material conditions), as well as the right to family life and the protection of the best interests of

the child (human dignity in terms of personal autonomy). A contrary interpretation, the CJEU pointed out, would result in a particularly serious interference with the rights of the individual to such an extent that it would undermine *the substance* of those fundamental rights within the meaning of Article 52(1) of the Charter (para. 52). However, as President Koen Lenaerts pointed out in his academic capacity, "the concept of the essence of a fundamental right – set out in Article 52(1) of the Charter of Fundamental Rights of the European Union – operates as a constant reminder that our core values as Europeans are absolute. In other words, they are not up for balancing" (Lenaerts, 2019, p. 779).

6. Conclusions

Overall, an analysis of the case law of the Court of Justice of the European Union shows that human dignity is not a static concept, but a living principle that structures and inspires the entire architecture of European fundamental rights. From this latter perspective, human dignity also has, as Habermas argues, a "heuristic function", through which new rights or unknown aspects of old fundamental rights are discovered, a context in which its *hermeneutic capacity* is revealed.

The three dimensions identified – *autonomy*, *material well-being*, and *physical and moral integrity* – are all *benchmarks in the application of the principle of legal interpretation regarding human dignity*. These are not mutually exclusive, but complement each other, outlining the image of an individual protected in all essential aspects of their existence.

From the freedom to self-determine and control one's own identity, to the guarantee of dignified living conditions and protection from physical and moral suffering or degradation, the concept of human dignity runs like *a red thread throughout the European legal order*.

Ultimately, human dignity can be defined as *the legal principle that recognises it both as a legal value and as a fundamental right, susceptible to an evolutive interpretation, encompassing the right to personal autonomy, which enables individuals to lead their lives according to their own choices, both in relation to themselves and within their community, the right to well-being, ensuring decent living conditions, and the right to physical and moral integrity, which excludes any form of humiliation, all these dimensions being interdependent and grounded in the fundamental notion that every person must be treated as an end in themselves, never merely as a means to an end*.

In this sense, human dignity remains the point of balance between freedom and responsibility, between the universalism of European values and the cultural diversity of the Member States.

Following Kant's formula of the categorical imperative, human dignity is not only the source of fundamental rights, but also a constant reminder that *law exists for the human being, not the human being for the law*.

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EUROVOICES: USING EMPIRICAL DATA TO DIAGNOSE GAPS IN JUSTICE AND FUNDAMENTAL RIGHTS IN THE EU

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Abstract: *Ensuring justice, inclusion, and non-discrimination requires not only robust legal frameworks but also a clear understanding of how these concepts are experienced by people in their everyday lives. This article examines the extent to which human dignity is protected and operationalized across EU Member States using empirical data from EUROVOICES, a large-scale initiative led by the World Justice Project, which measures people's experiences and perceptions with the rule of law through surveys conducted among the general population and legal experts. The article focuses on key dimensions that form the practical conditions of human dignity: fundamental rights and civic space; equality and non-discrimination; and access to justice.*

Key words: *survey data, rule of law, fundamental rights, human dignity, justice*

1. Introduction

Human dignity is both a fundamental right and essential to the functioning of a democratic society and to upholding the rule of law (European Union, 2007). While these concepts are embedded in international and constitutional texts, recognition alone is not sufficient. They must also be operational in people's daily lives. The question guiding this article is: to what extent do people across the European Union (EU) experience, in practice, the institutional guarantees of human dignity that are promised in law?

Ensuring human dignity requires not only robust legal frameworks but also a clear understanding of how it is experienced by individuals in their everyday lives. To this avail, this paper will explore findings from EUROVOICES, a large-scale data initiative conducted by the World Justice Project (WJP), which captures people's experiences and perceptions of the broader state of rule of law across the 27 EU Member States. By integrating expert assessments and representative household surveys, EUROVOICES

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provides a people-centred perspective that complements traditional legal analysis. Its results offer a unique diagnostic tool for identifying where legal protections function effectively and where they fail to secure human dignity in practice.

Integrating a people-centred perspective into legal and policy assessments is key for advancing justice, fostering inclusion, and meaningfully safeguarding human dignity in the EU. By grounding reform in the realities of those the law seeks to protect, institutions can better identify where protections are falling short, and how to improve them.

1.1. Human dignity and the rule of Law in a changing world

Human dignity is recognized as an inviolable and inherent right in major international treaties, including the Universal Declaration of Human Rights, the International Covenants on Civil and Political Right and on Economic, Social, and Cultural Rights, as well as the Charter of Fundamental Rights of the EU. Within the EU, Article 2 of the Treaty on European Union (TEU) enshrines dignity alongside democracy, equality, human rights, and the rule of law as a foundational value.

Although there is no single, uniform interpretation, three core features of dignity remain constant. First, human dignity expresses the inherent worth of every person simply by virtue of being human. It is neither granted by the state nor earned through conduct (Dupré, 2024). Second, according to the Council of Europe, dignity has a relational dimension. It structures how individuals treat one another in society, requiring equal concern, reciprocal respect, and mutual recognition. Thus understood, dignity is both individual and social. Third, in today's technological and geopolitical environment, dignity also safeguards individual autonomy and agency. People must retain the capacity for self-determination, including the ability to make free and informed choices, to understand and contest how developments affect their lives, and to live without coercion, manipulation, or other forms of dehumanization (Council of Europe, 2024). When upheld, dignity ensures that each person's inherent value and worth are respected, regardless of background, characteristics, or circumstances. It likewise pertains to the equal and inclusive manner in which all people should be treated (Council of Europe, 2024).

The rule of law is the primary mechanism through which human dignity becomes enforceable (Venice Commission, 2011). According to the Venice Commission (2016), it constrains arbitrariness through checks and balances, secures equality before the law, protects fundamental rights and freedoms, and provides effective remedies when preconditions of dignity are violated. When the rule of law weakens, human dignity is the first to suffer. People lose the means to defend themselves against discrimination or violence, and the legal order ceases to protect the vulnerable, allowing political or economic power to prevail unchecked.

It is within this relationship between dignity and the rule of law that this analysis draws on findings from EUROVOICES. By examining how the rule of law is experienced rather than merely proclaimed, EUROVOICES provides empirical evidence of where these safeguards hold and where they fall short across the 27 EU Member States. The indicators selected for the following analysis represent practical preconditions for the

enjoyment of human dignity. The next section describes the EUROVOICES methodology on which these findings are based.

2. EUROVOICES: Conceptual Framework and Methodology

EUROVOICES is a large-scale data initiative conducted by WJP to measure people's perceptions and experiences of the rule of law in practice, including key aspects of democratic governance and justice across the 27 EU Member States. It draws upon more than 8,000 survey responses from local and independent legal experts, as well as over 64,000 regionally representative household surveys. This exercise builds upon WJP's experience assessing the rule of law in more than 140 countries through the *WJP Rule of Law Index*, with an expanded framework adapted to reflect the EU context.

2.1. Conceptual framework

EUROVOICES features dozens of people-centered indicators organized into ten pillars: (1) checks on government powers, (2) government respect for checks on power, (3) civic participation, (4) fundamental rights, (5) civil justice, (6) criminal justice, (7) safety, (8) control of corruption, (9) transparency and access to information, and (10) administrative proceedings, regulatory enforcement, and property rights. They assess outcomes and effectiveness as experienced by individuals, instead of what laws say or how institutions are organized on paper (WJP, 2024). Figure 1 displays the 10 pillars and 51 sub-pillars of EUROVOICES.

EUROVOICES is based on WJP's four principles definition of the rule of law: accountability; laws that are clear, public, stable, and rights-protective; fair and accessible lawmaking and enforcement; and timely justice by competent, independent, and impartial institutions. This definition guides the adaptation of these people-centered indicators for the EU context.

During the conceptual design phase, WJP researchers conducted an extensive literature review process and held consultations with representatives from international organizations, academic institutions, EU agencies, and civil society organizations. The team then drafted questionnaires for legal experts and the general public.

The following table lists the 10 pillars and 51 sub-pillars measured in EUROVOICES.

1. Checks on government powers
1.1. Legislative oversight
1.2. Judicial independence
1.3. Independent oversight
1.4. Independent prosecution
1.5. Free, fair, and secure elections
1.6. Non-governmental checks

2. Government respect for checks on power
2.1. Government respect for the constitution and political opponents
2.2. Government respect for judicial independence
2.3. Government respect for independent oversight
2.4. Government respect for independent prosecution
2.5. Government respect for the electoral system
2.6. Government respect for civil liberties

3. Civic participation
3.1. Civic participation

4. Fundamental rights
4.1. Prohibition of torture and inhuman treatment
4.2. Prohibition of slavery and forced labor
4.3. Freedom of thought, conscience, and religion
4.4. Freedom of peaceful assembly and association
4.5. Freedom of opinion and expression
4.6. Right to property
4.7. Right to asylum
4.8. Equality before the law
4.9. Workers' rights
4.10. Right to vote and to stand as a candidate at elections
4.11. Right of access to documents
4.12. Right to petition
4.13. Right of movement and of residence

5. Civil justice
5.1. Legal capability
5.2. Access to legal aid and representation in cases of civil disputes
5.3. Accessible, appropriate, and timely dispute resolution
5.4. Impartial and independent dispute resolution
5.5. Effective and outcome-oriented dispute resolution
5.6. Alternative dispute resolution mechanisms

6. Criminal justice
6.1. Effective and impartial criminal investigation
6.2. Effective and impartial prosecution and pre-trial proceedings
6.3. Effective and impartial criminal adjudication
6.4. Alternative criminal justice mechanisms
6.5. Victims' rights
6.6. Due process of law
6.7. Rights of persons deprived of liberty

7. Safety
7.1. Perceptions of safety
7.2. Control of violence

8. Control of corruption
8.1. Absence of bribery
8.2. Absence of corrupt procurement practices
8.3. Absence of embezzlement
8.4. Absence of favoritism
8.5. Absence of corrupt electoral practices

9. Transparency and access to information
9.1. Transparency and access to information

10. Administrative proceedings, regulatory enforcement, and right to property
10.1. Simple, predictable, and timely administrative proceedings
10.2. Right to property
10.3. Regulatory enforcement

Fig. 1. *The pillars and subpillars measured in EUROVOICES*

2.7. Data Collection and Data Analysis

EUROVOICES uses two original sources of information collected in 2024: surveys conducted among local and independent legal experts ("Expert Scorecard") and regionally representative household surveys ("People's Voices"). The expert surveys were administered online in 12 languages to qualified legal practitioners across the EU. WJP reached these legal practitioners through partnerships with bar associations, universities, law firms, and civil society organizations, and vetted each respondent for expertise in civil law, civil liberties, commercial law, constitutional law, criminal law, or labor law. In total, the team obtained 8,042 expert survey responses. The household surveys were

administered to a representative sample of 64,089 people across the EU. The poll was conducted either face-to-face (in 10 countries) or online (in 17 countries) by leading polling companies in the EU. The survey was translated into more than 20 languages.

These surveys were conducted throughout 110 subnational regions, which correspond to the EU's Nomenclature of Territorial Units for Statistics (NUTS) system, at either the NUTS1 or NUTS2 level, depending on the country. For transparency and reuse, EUROVOICES published questionnaires, expert counts by country, and polling/sample details, together with a variable map linking survey questions to each indicator online.

The WJP team employed several strategies to ensure the robustness of results, such as cross-validation with trusted third-party sources, an AI-assisted review of news articles, a comprehensive review of official documents and reports published by peer organizations, and semi-structured interviews with experts. EUROVOICES presents aggregated expert assessments on a standard 0-1 scale separately from question-level population results (percentages). This improves clarity and usability by providing two complementary perspectives on how the rule of law functions in practice. Together, these sources enable coherent sub-national mapping of rule of law variation across the EU.

By systematically capturing both expert evaluations and the voices of ordinary people, EUROVOICES provides a diagnostic tool that can inform evidence-based policy reform at both national and EU levels. It identifies where rights are strong on paper but weak in practice, and where institutional integrity and public trust require renewed attention. The next section summarizes the most relevant EU-wide findings from this approach.

3. From Guarantees to Lived Reality: EU-Wide Findings

Human dignity is upheld when individuals enjoy equal treatment without discrimination, can freely speak and assemble, have access to reliable information, are protected from arbitrary power, and have access to timely, affordable, and impartial justice. These conditions are also core elements of the rule of law landscape evaluated by EUROVOICES. This section examines the extent to which those conditions are secured in practice across the EU. Using EUROVOICES indicators, it assesses whether formal guarantees are translated into daily life. Taken together, the results provide a people-centred diagnostic of strengths and gaps across the EU Member States, identifying regional patterns, pockets of resilience, and areas where the conditions for dignity are at risk. Figure 2 presents data for selected indicators, noting whether it refers to data from expert surveys ("Expert Data") or household surveys ("People's Voices").

Panel A includes selected indicators from WJP's expert surveys in the EU. These scores range between 0 and 1, with 1 being the highest possible score. Panel B includes selected indicators from WJP's household surveys in the EU, presented as percentages.

Panel A. EUROVOICES, Expert Scorecard (scales 0-1), Selected Indicators

Country	Freedom of opinion and expression	Freedom of assembly and association	Equality before the law	Accessible, appropriate, and timely dispute resolution
EU average	0.70	0.75	0.71	0.49
Austria	0.74	0.77	0.77	0.58
Belgium	0.73	0.73	0.73	0.59
Bulgaria	0.54	0.62	0.63	0.49
Croatia	0.55	0.65	0.59	0.44
Cyprus	0.59	0.65	0.66	0.41
Czechia	0.81	0.84	0.75	0.50
Denmark	0.87	0.90	0.82	0.55
Estonia	0.84	0.88	0.88	0.64
Finland	0.90	0.87	0.86	0.54
France	0.65	0.72	0.64	0.43
Germany	0.84	0.83	0.78	0.56
Greece	0.57	0.71	0.62	0.40
Hungary	0.41	0.58	0.59	0.44
Ireland	0.85	0.87	0.70	0.54
Italy	0.63	0.69	0.61	0.42
Latvia	0.72	0.72	0.73	0.56
Lithuania	0.72	0.68	0.76	0.69
Luxembourg	0.78	0.83	0.75	0.55
Malta	0.65	0.71	0.61	0.41
Netherlands	0.86	0.85	0.75	0.57
Poland	0.59	0.67	0.59	0.38
Portugal	0.75	0.81	0.65	0.42
Romania	0.61	0.68	0.65	0.40
Slovakia	0.65	0.75	0.68	0.42
Slovenia	0.66	0.69	0.77	0.51
Spain	0.67	0.77	0.70	0.43
Sweden	0.84	0.85	0.79	0.57

Source*: WJP EUROVOICES 2024*

Panel B. EUROVOICES, People's Voices, Selected Indicators

Country	Freedom to participate in peaceful protests	Freedom to express opinions against the gov.	Freedom of media to expose cases of corruption	Freedom of CSOs to criticize gov. policies	Use of misinform-mation to shape public opinion	Attacks on media and civil society	Experiences of discrimina-tion	Equality and fair treat-ment in the civil justice system
EU avg.	**69.2%**	**70.9%**	**53.1%**	**57.9%**	**62.0%**	**54.6%**	**35.6%**	**36.7%**
Austria	75.4%	75.3%	54.2%	63.1%	67.6%	54.7%	52.0%	36.9%
Belgium	75.4%	73.0%	58.3%	65.1%	53.0%	38.6%	44.6%	33.6%
Bulgaria	71.7%	75.8%	46.9%	57.4%	74.0%	65.1%	10.5%	24.3%
Croatia	68.3%	59.5%	46.2%	49.9%	73.8%	73.4%	33.4%	24.0%
Cyprus	64.3%	63.1%	45.3%	51.6%	79.0%	65.4%	32.4%	23.1%
Czechia	68.6%	63.2%	49.8%	50.7%	58.3%	58.3%	53.0%	31.4%
Denmark	82.7%	86.1%	74.0%	81.6%	40.5%	29.9%	41.4%	62.2%
Estonia	66.4%	73.4%	57.6%	56.7%	60.4%	50.6%	38.3%	36.4%
Finland	84.2%	82.9%	69.9%	73.8%	46.6%	41.5%	40.8%	53.0%
France	62.2%	69.1%	46.8%	48.8%	59.9%	58.8%	37.0%	34.0%
Germany	69.8%	71.2%	57.2%	62.4%	50.0%	38.4%	47.1%	44.0%
Greece	66.4%	70.5%	37.3%	49.3%	76.0%	72.9%	14.4%	43.5%
Hungary	45.7%	43.0%	28.7%	32.8%	70.5%	66.1%	58.0%	26.2%
Ireland	74.3%	80.1%	53.2%	66.5%	57.5%	49.4%	46.2%	36.1%
Italy	52.6%	64.5%	44.4%	56.9%	65.0%	58.4%	35.9%	29.7%
Latvia	65.8%	64.0%	47.1%	51.8%	61.7%	53.5%	23.3%	37.6%
Lithuania	72.8%	64.5%	52.4%	54.6%	59.8%	48.2%	24.9%	32.1%
Lux.	77.5%	73.7%	41.8%	50.5%	37.6%	26.9%	40.2%	52.2%
Malta	76.4%	75.4%	49.3%	53.6%	64.9%	68.5%	26.2%	34.0%
Nether.	78.4%	82.2%	68.3%	72.5%	44.9%	33.5%	43.7%	54.3%
Poland	64.8%	65.3%	59.7%	64.7%	64.1%	62.9%	14.8%	47.1%
Portugal	74.3%	81.4%	73.2%	69.3%	68.8%	53.7%	10.4%	41.1%
Romania	70.1%	75.1%	65.1%	67.8%	76.0%	71.5%	16.7%	42.8%
Slovakia	67.8%	69.7%	43.7%	45.8%	65.7%	64.2%	50.5%	21.3%
Slovenia	59.6%	62.4%	46.0%	45.6%	72.2%	65.1%	42.9%	20.5%
Spain	59.9%	65.5%	49.8%	54.5%	73.8%	66.4%	43.3%	29.2%
Sweden	74.4%	84.4%	67.3%	66.9%	51.9%	38.8%	39.0%	41.6%

Source: *WJP EUROVOICES 2024*

Fig. 2. *Selected data from WJP EUROVOICES 2024*

3.1. Fundamental Rights, Freedoms, and Civic Space

Freedom of opinion and expression and freedom of assembly and association are among the key means by which human dignity is exercised in public life. These rights enable public debate, allow individuals to question authority, and ensure accountability. Yet protection of these freedoms varies across the EU, with Hungary consistently showing the greatest challenges in these areas, both according to legal experts and to the general population. These freedoms are not abstract entitlements. They are the conditions through which human dignity finds collective expression. The ability to speak one's mind, to assemble with others, and to engage freely in public life transforms dignity from a moral principle into a lived reality.

The expert indicator for *freedom of opinion and expression* has an average of 0.70 across the 27 EU Member States, on a scale of 0 to 1. This indicator evaluates the right of all people to express their opinions without censorship, including the media and civil society organizations (CSOs). Finland (0.90) and Denmark (0.87) have the highest scores, while Hungary (0.41) and Bulgaria (0.54) have the lowest scores. Similarly, the expert indicator for *freedom of assembly and association* has an average of 0.75 across the EU. This indicator examines the right of all people to organize, debate, and demonstrate collectively, as well as the right to assemble and form associations without unjustified government obstacles. Denmark (0.90) and Estonia (0.88) have the highest scores, while Hungary (0.58) and Bulgaria (0.62) present the lowest scores.

Public perceptions mirror this trend. In 26 EU countries, the majority of respondents from the general population think that *people can freely participate in peaceful protests* and believe that *people can freely express opinions against the government*, with Hungary being the only country where fewer than half of the population believe so.

Regarding freedom of the media, in 14 EU countries (Bulgaria, Croatia, Cyprus, Czechia, France, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Slovakia, Slovenia, and Spain) fewer than half of respondents think that the *media can freely expose cases of corruption by high-ranking government officers without fear of retaliation*. Findings from the Media Pluralism Monitor (MPM) 2025 validate these findings, revealing deteriorating conditions for journalists in several EU countries, including physical threats and online harassment and surveillance. In fact, the MPM 2025 categorizes 13 EU countries as having medium-high and high risk for the state of media pluralism and safety of journalists across Europe (Centre for Media Pluralism and Media Freedom, 2025).

Across the EU, people also identify challenges regarding the civil society environment. In six EU countries, fewer than half of the population believe *CSOs can freely express opinions against government policies and actions without fear of retaliation* (Croatia, France, Greece, Hungary, Slovakia, and Slovenia). This pattern aligns with the analysis in the European Commission's 2025 Rule of Law Report, which notes that although "most Member States continue to ensure an enabling and supportive framework for civil society", there are "increasing challenges for civil society, with new legal restrictions,

insufficient funding or physical and verbal attacks" in some countries, such as Hungary and Slovakia (European Commission, 2025).

These challenges are particularly troublesome in the information environment. In 23 EU Member States, the majority of respondents believe that *top government officials use misinformation to shape public opinion in their favor* (in eight countries, this proportion is higher than 70%), or where more than half of respondents across 18 EU countries think that *top government officials attack or discredit the media and civil society organizations that criticize them*, according to EUROVOICES data. When public discourse is distorted by misinformation or intimidation, individuals lose the capacity for autonomous judgment. In such conditions, human dignity is undermined, for it depends on access to reliable and truthful information as the foundation of freedom and equality in public life.

3.2. Equality and Non-Discrimination

The average score for the expert indicator of *equality before the law*, which measures whether all people enjoy the same legal and political rights and access to public services, is 0.71 across the 27 EU Member States. No country obtained a perfect score. Top performers include Estonia (0.88) and Finland (0.86), while Croatia, Hungary, and Poland (all 0.59) had the lowest scores. Furthermore, in 22 Member States, more than 20% of respondents reported experiencing *discrimination or harassment* in the last 12 months, mostly due to age and political opinion.

These findings echo results from the most recent Eurobarometer on Discrimination (2023), where more than one in five respondents say they have personally felt discriminated against or experienced harassment in the past 12 months (an increase of 4 percentage points since 2019), and that the most common forms of discrimination were age, gender, and political opinions. While formal guarantees for equality and non-discrimination exist in the EU, the findings highlighted above point to potential deficiencies in their implementation in practice.

3.3. Access to Justice

Access to justice represents a practical test of dignity in the EU. Rights have substance only if individuals can obtain remedies that are affordable, timely, and impartial when they need them. The expert indicator for *accessible, appropriate, and timely dispute resolution* averages 0.49 across the 27 EU Member States (country-level scores range from 0.64 in Estonia to 0.38 in Poland). This indicator captures whether state and alternative dispute-resolution mechanisms are available to all people regardless of socioeconomic status, responsive to different types of problems, and free of unreasonable delays. EUROVOICES data also shows a gap between expert assessments and public experience. In 20 Member States, fewer than half of public respondents

believe legal aid is accessible; in 26 (all but Malta), fewer than half say people can afford the costs of state dispute-resolution mechanisms when facing legal problems. Only four EU countries have a public majority who think that *all parties are treated equally and fairly within the civil justice system of their country*. A similar pattern is seen in criminal justice. Expert scores are moderate for adjudication (0.63) and investigation (0.60), yet fewer than 53% of people across the EU agree that the criminal justice system handles cases promptly and efficiently.

From this, two considerations follow. First, the findings highlight shortcomings in both the design of justice mechanisms and their implementation. Legal frameworks exist, but they often fail to ensure that procedures are affordable, timely, and applied equally. Reforms that simplify procedures, enforce strict time limits, and expand means-tested assistance can turn rights into effective remedies. Second, regional consistency is essential, as uneven performance across the EU Member States undermines the equal protections intended by the EU legal framework. When proceedings are delayed, inaccessible, or perceived as unequal, the justice system fails to fully achieve its mission of giving real effect to personal dignity through effective redress (Charter of Fundamental Rights of the EU, Article 47).

4. Conclusion

Human dignity and the rule of law are mutually reinforcing. Human dignity serves as the moral foundation of law, while the rule of law gives dignity its institutional form. By translating the moral imperative of dignity into enforceable guarantees, the rule of law restraints arbitrariness through checks and balances, ensures equality before the law, protects fundamental rights, and provides effective remedies when dignity is violated. Drawing on EUROVOICES data, which is based on responses from more than 64,000 individuals and 8,000 legal experts across the EU, this article examines how this relationship functions in practice. It explores to what extent people experience, in their daily lives, the legal protections that give effect to human dignity.

Three groups of indicators were selected for this analysis (fundamental rights, freedoms and civic space, equality and non-discrimination, and access to justice) as they represent the practical preconditions for the enjoyment of human dignity.

Across these dimensions, the findings show the EU with strengths but uneven performance. Fundamental rights and freedoms, such as freedom of expression, association, and assembly, remain robust but face strain in some Member States. Where civil society and independent media are under pressure, these freedoms weaken. Equality before the law is guaranteed by constitutions but enforced inconsistently. Discrimination based on political opinion, ethnicity, and age is still common. Access to justice shows areas of opportunity too. Delays, costs, and unequal treatment erode trust and leave many without redress when dignity is violated.

The rule of law is Europe's main safeguard of human dignity. But its strength depends on implementation, not just legal texts. When checks and balances work, reliable information flows freely, participation matters, and justice is timely, human dignity thrives. When safeguards weaken, dignity suffers first. Without effective enforcement, dignity remains a promise without substance.

As the EU faces unprecedented challenges, the task is to renew, not reinvent, its core values. Human dignity must remain at the centre of law, policy, and governance. The credibility of the EU's rules-based order hinges on protected civic space and a free, plural press; on the equal enforcement of anti-discrimination norms; and on justice that is accessible and affordable. Embedding people-centered evidence such as EUROVOICES within monitoring and evaluation provides the basis for targeting reforms where risks are most acute.

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ADVANCING HUMAN DIGNITY UNDER CRIMINAL LAW

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DOMESTIC VIOLENCE - SERIOUS DAMAGE TO HUMAN DIGNITY. ROMANIA VERSUS SPAIN

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Abstract: *Despite legislative and institutional efforts initiated both at national and European level, the phenomenon of domestic violence continues to affect many people, regardless of age, gender, race or social status. Comparing the regulations in Romanian and Spanish criminal law offers a complex perspective on how different legal systems try to protect victims and prevent the commission of such crimes. The analysis has as its starting point the recent changes in Romanian criminal law and the permanent concern of European institutions for the protection of victims of domestic violence. We aimed to comparatively analyze the regulations in Romania and Spain, to identify the strengths and vulnerabilities of each system. This research also aims to evaluate the legislative measures adopted in Romania and Spain and to what extent they manage to ensure the effective protection of victims, as well as the efficiency of the sanctions applied to the aggressors.*

Key words: *domestic violence, victim, crime, sanction*

1. Introduction

Aggressors in cases of domestic violence do not constitute a homogeneous group, but research in the fields of psychology and criminology has identified certain recurring behavioral patterns. According to studies conducted by Neil Jacobson and John Gottman in *When Men Batter Women*, aggressors can be classified into two main categories: “occasional violent aggressors," who react to specific frustration-triggering situations, and "terroristic aggressors”, who exert systematic and coercive control over their partner (Gottman, 2007). The latter are the most dangerous, as their violence is premeditated and aimed at the total domination of the victim.

Most aggressors exhibit a psychological profile characterized by a need for control, manifested through possessive behaviors, excessive jealousy, and tendencies to isolate the victim from friends and family. In *Why Does He Do That*? *Inside the Minds of Angry and Controlling Men*, Lundy Bancroft describes aggressors as “having an exaggerated

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sense of entitlement over the victim", believing that she must comply with their desires, and showing a diminished capacity for empathy (Bancroft, 2003). Some aggressors minimize their violent behavior or justify it by blaming the victim. Risk factors such as alcohol and drug abuse, a history of domestic violence, childhood trauma, or mental health disorders like antisocial personality disorder or borderline personality disorder, can contribute to violent behavior. Psychologist Donald Dutton, in his book *The Abusive Personality: Violence and Control in Intimate Relationships*, emphasizes that "many aggressors were exposed to domestic violence in their childhood and internalized this relational model" (Dutton, 1998). Although the majority of aggressors are men, domestic violence can also be perpetrated by women, although at much lower rates. Studies show that female aggressors are more likely to display psychological violence and emotional manipulation, but they may also resort to physical violence, especially in relationships marked by mutual conflict. Like the aggressors, victims of domestic violence are highly diverse, but statistics indicate that women represent a significantly higher percentage of those affected, primarily due to societal pressures to keep the family intact despite the violence. Factors that contribute to a victim's prolonged stay in an abusive relationship include economic dependence, fear of social stigmatization, lack of family support, and feelings of shame or guilt. Repeated trauma can lead to a form of "learned helplessness", where the victim no longer believes she can escape the abusive relationship (Bancroft, 2003). Additionally, the normalization of violence within the family or community can cause the victim to perceive abuse as inevitable and normal. A study published by the Friedrich-Ebert-Stiftung (Youth Study Romania 2024, FES) Foundation in October 2024 on young people in Romania highlights a series of concerns related to relationships, particularly domestic violence. According to the analyzed data, fear of becoming a victim of violence (physical, sexual, or domestic) is one of the greatest concerns expressed by young Romanians. Specifically, women show a significantly higher level of anxiety compared to men, with the percentage being about 50% higher regarding the fear of becoming victims of domestic violence. Moreover, risk factors associated with these fears include previous experiences of violence, general perceptions of safety in society, and the lack of effective protective mechanisms. The study also emphasizes that this fear is integrated into a broader context of insecurity, which includes other aspects such as the risk of being robbed or becoming a victim of a terrorist attack. The analysis further highlights that these fears are influenced by socio-economic and cultural factors. In particular, the normalization of violence within relationships and societal pressures contribute to the internalization of fear by women, which may hinder the reporting of abuse or seeking necessary support. At the same time, the study shows that Romania is among the countries where young people exhibit the highest levels of anxiety concerning physical and domestic violence, with levels comparable to Bosnia and Turkey (Youth Study Romania 2024, Fundația Friedrich-Ebert-Stiftung (FES).

At the same time, the Spanish National Institute of Statistics (INE) published on May 17, 2024, a statistical report on cases of domestic violence recorded in 2023. According to the report, the number of female victims of gender-based violence in 2023 was 36,582, representing an increase of 12.1% compared to 2022 (Estadística de Violencia Doméstica y Violencia de Género (EVDVG)2023). This substantial rise may indicate either

a genuine increase in the number of cases or a higher level of trust in institutions among victims, leading them to report abuse more frequently. Likewise, the number of men reported for gender-based violence reached 36,434, also reflecting a 9.7% increase from the previous year. This near numerical parity between victims and aggressors confirms that gender-based violence is a systemic phenomenon, disproportionately affecting women, with the majority of aggressors being men. It is important to note that in Spain, gender-based violence is defined primarily as violence perpetrated by men against women within intimate or former relationships, unlike other legal systems that encompass broader forms of violence. This legal framework is based on the understanding that violence against women represents an expression of structural gender inequality. Regarding domestic violence, the report indicates 9,126 victims in cases involving protection orders or precautionary measures, of whom 61.1% were women and 38.9% men. These figures suggest that, while women remain the majority of victims, a significant proportion of men also experience domestic violence, likely within broader family conflicts not necessarily associated with gender-based violence. The INE statistics for 2023 confirm that gender-based and domestic violence remain major social issues in Spain, and the rising number of reported cases points to a worrying trend. However, this increase may also be interpreted as a positive sign, reflecting greater confidence in the justice system and victim protection mechanisms (Estadística de Violencia Doméstica y Violencia de Género (EVDVG), 2023, Spanish National Institute of Statistics)

2. Regulation of Domestic Violence in Romanian Criminal Law

Romanian criminal law has undergone a significant evolution in the regulation of domestic violence, reflecting a growing concern for victim protection and the punishment of aggressors. In the past, this issue was addressed in a fragmented manner, with legislation lacking clear intervention mechanisms. A major turning point came with the adoption of Law no. 217/2003 on Preventing and Combating Domestic Violence, which introduced precise definitions and protective measures for victims. The first article of Law no. 217/2003 states: “The protection and support of the family, the development and strengthening of family solidarity, based on friendship, affection, and mutual moral and material assistance among family members, constitute an objective of national interest.” (L. 217/2003). This article has a declarative character, setting forth the general principles that guide the entire normative act. Its purpose is to emphasize the importance of the family as a social institution and to promote values such as solidarity, affection, and mutual support among family members. By declaring that family protection is an ‘objective of national interest’, the legislator underscores that the state bears the responsibility to protect and assist the family, while also intervening when this institution is affected by conflict or violence. Over time, this law has been amended multiple times to align with international standards and respond to evolving social needs. For instance, Law no. 174/2018 expanded the definition of domestic violence to include less visible forms such as psychological, economic, and social violence: “For the purposes of this law, domestic violence means any inaction or intentional act of physical, sexual, psychological, economic, social, or spiritual violence

occurring within the family or domestic environment, or between spouses or former spouses, as well as between current or former partners, regardless of whether the aggressor lives or has lived with the victim."(L 174/2028)

Considering the growing impact of technology-facilitated abuse, the definition was further amended by Law no. 106/2020, to include cyber violence: "For the purposes of this law, domestic violence means any inaction or intentional act of physical, sexual, psychological, economic, social, spiritual, or cyber violence occurring within the family or domestic environment, or between spouses or former spouses, as well as between current or former partners, regardless of whether the aggressor lives or has lived with the victim". (L 106/2020)

More recently, Law no. 1/2025 (amending and supplementing Law no. 217/2003) strengthened victims' rights by introducing clear obligations for local authorities and social assistance institutions, ensuring that victims have access to effective and accessible support services. (L 1/2025) From a criminal law perspective, the Romanian Criminal Code explicitly sanctions domestic violence under Article 199, which provides that acts of violence committed against a family member constitute an aggravating circumstance: "If the acts provided in Articles 188, 189, and 193–195 are committed against a family member, the special maximum of the penalty provided by law shall be increased by one quarter". (Penal Code). This provision is essential in differentiating domestic violence from other violent crimes, highlighting the particular social gravity and the disruptive impact such acts have on interpersonal relationships and social harmony. Furthermore, paragraph 2 of the same article introduces the default prosecution of certain domestic violence offenses: "In the case of offenses provided for in Articles 193 and 196 committed against a family member, criminal proceedings may also be initiated by default. Reconciliation removes criminal liability". These refer to assault or other acts of violence and bodily injury by negligence. This legal framework reflects the legislator's clear intent to grant differentiated legal treatment to offenses committed against family members, placing them within the category of crimes against life and physical integrity, but with an essential qualifying element — the family context of the act. This qualification establishes an aggravated form of common-law offenses, justified by the specific relationship between aggressor and victim (Manea, 2024).

In addition to the provisions of the Criminal Code, Law no. 217/2003 also identifies and sanctions various forms of domestic violence, acknowledging the complexity of this phenomenon. Physical violence is the most visible form of abuse; however, the law also recognizes other types of violence that can have equally severe consequences for victims. Psychological violence, for example, may include threats, emotional manipulation, or social isolation of the victim, while economic violence manifests through control over financial resources, restriction of access to employment, or deprivation of the means necessary for a decent living. Furthermore, the law acknowledges spiritual violence, defined as the imposition of religious or cultural beliefs that restrict the victim's freedom, as well as social violence, which consists of limiting the victim's contact with family or friends. The introduction of the concept of cyber violence reflects a contemporary reality, as many victims are harassed online or subjected to various forms of abuse through digital technologies.

3. Regulation of Domestic Violence in Spanish Criminal Law

Over the past decades, the issue of domestic violence has gained increasing importance within European criminal law, and Spanish criminal law is no exception. The regulation of this phenomenon has undergone a profound transformation, shifting from a fragmented and subsidiary approach to a comprehensive legal framework focused on the effective protection of victims and the recognition of the specific nature of violence occurring within family or intimate relationships. Contemporary Spanish criminal law reflects this change both normatively, through the introduction of specific offenses and aggravating circumstances, and institutionally, through the creation of specialized courts and an integrated protection mechanism. The Organic Law 1/2004 on Comprehensive Protection Measures against Gender Violence was adopted by the Spanish legislature at the end of 2004 in response to an urgent social need — to combat violence committed by men against women within affective relationships. This act was described as a "comprehensive" law, meaning that it goes beyond the criminal dimension to include civil, educational, institutional, and social measures, serving as a central instrument in Spain's fight against gender-based violence. From a legal standpoint, the law's cross-sectoral character represents a significant innovation. The legislator did not limit itself to punishing aggressors but instead established a complete system of prevention and protection for victims, including psychological support, legal counseling, financial assistance, and immediate intervention through protection orders. However, this broad approach also produces certain challenges. The overlap between criminal and administrative norms, as well as the parallel involvement of civil and criminal courts, raises questions about the coherence and practical effectiveness of the law. From the perspective of the principle of legality, it is essential to clearly delineate the boundaries between criminal liability and protective measures to ensure predictability and proportionality in the application of the law. Another sensitive issue lies in the concept of "gender-based violence" as defined by the law. The text restricts protection exclusively to cases in which the aggressor is a man and the victim is a woman, within a current or former intimate relationship. This narrow definition has been criticized in legal doctrine as potentially discriminatory and contrary to the constitutional principle of equality before the law. Critics argue that treating identical acts differently depending on the sex of the perpetrator and the victim introduces a form of unequal treatment that may undermine the coherence of criminal law. In its Preliminary Title, the legislator establishes the general framework and purpose of the law. Article 1 declares that the objective of the law is to "prevent, punish, and eradicate gender-based violence and to ensure comprehensive protection for its victims". It is important to note the expressive nature of this definition: the protection of the victim is not merely a by-product of punishment, but a goal in itself. The scope of the law is explicitly limited to cases of violence perpetrated against women by men who are or have been linked to them through an affective relationship, thus confirming the legislator's choice for a differentiated approach, which remains debatable in light of the principle of equality before the law. The law also introduces significant limitations regarding the suspension or substitution of sentences in cases of gender-based violence. Amendments to Articles

83, 84, and 88 of the Criminal Code make the suspension of a sentence conditional upon specific obligations, such as participation in rehabilitation programs, psychological treatment, or the prohibition of approaching the victim. Article 33 provides that, in cases of gender-based violence, "the judge or court shall in all cases condition the suspension on compliance with the obligations set out in paragraphs 1, 2, and 5," meaning that these conditions are not optional but mandatory. This legislative solution restricts judicial discretion and reinforces the preventive and educational function of punishment. Failure to comply with these obligations during the suspension period automatically leads to its revocation, strengthening the conditional and punitive character of state clemency. Similarly, Article 35 limits the possibility of substituting imprisonment in cases of conviction for gender-based violence. The prison sentence may only be replaced with community service, excluding other more lenient alternatives. In addition, participation in psychological and re-education programs is made mandatory, turning sentence substitution into a genuine form of penal treatment. This approach reaffirms the teleological nature of the law: punishment serves not only a retributive function but also a reformative one, emphasizing rehabilitation and social reintegration. Articles 36 and 37 amend the legal regime of bodily harm and mistreatment, establishing harsher penalties for offenses committed against certain categories of victims. Crucially, the scope of these aggravated provisions is extended to include "a woman who is or has been linked to the perpetrator through a relationship of affection, even without cohabitation" (Article 153 of the Criminal Code), thereby acknowledging the diversity of modern intimate relationships. This formulation has been praised as progress in victim protection, since it no longer conditions punishment on marriage or cohabitation. Nonetheless, by explicitly referring to female victims, the text keeps open the debate over legal asymmetry, as violence committed by a woman against a man in a similar relationship does not automatically receive the same aggravated treatment. Article 153 details the offense of minor physical or psychological violence, establishing an autonomous incrimination that may result in imprisonment or alternative penalties, even when the act does not reach the level of injury defined in Article 147 of the Criminal Code. Thus, even minor acts of aggression — such as hitting or insulting in a context of gender violence — are criminally punishable. The legislator further provides aggravating circumstances when the offense is committed in the presence of minors, with weapons, or in the victim's home, highlighting both the social danger and the traumatic nature of such acts. Articles 38 and 39 complement the Criminal Code with offenses addressing minor threats and coercion within intimate relationships or against vulnerable persons. The law applies the same penalties as for mistreatment — imprisonment from six months to one year or community service — emphasizing the repetitive, subtle, and escalating nature of this type of abuse. Interestingly, both articles introduce an objective aggravating framework: penalties are imposed at the upper limit if the act is committed in the presence of minors, in the victim's home, or in violation of a protection order. At the same time, the court retains limited flexibility to impose a lower penalty depending on the offender's personal circumstances and the factual context, allowing for individualized sentencing. The Organic Law 1/2004 thus represents a comprehensive criminal reform, shaping a specific sanctioning regime for gender-

based violence, focused not only on repression, but also on education, prevention, and protection. The expansion of criminal liability and the restriction of penal leniency reflect a firm legislative response to a systemic social phenomenon. Nonetheless, from the perspective of legal balance, it remains essential to assess how these norms interact with the classical principles of criminal law — namely proportionality, impartiality, and equality before the law.

4. Protection of Victims and Prevention of Violence. Spain vs. Romania

Domestic violence, although a social phenomenon present since ancient times, has only recently entered the focus of legislators and society as a serious issue with direct implications for fundamental human rights. In recent decades, it has been recognized not only as a form of physical abuse but also as an expression of power inequality within family relationships, profoundly affecting the life, freedom, and dignity of victims. In this context, the protection order has emerged as an indispensable legislative measure for preventing the escalation of violence and safeguarding vulnerable individuals. The European Union has consistently promoted the fundamental values of human dignity, equality, solidarity, and the rule of law, emphasizing the need to protect individuals from all forms of abuse. In line with these principles, Romania adopted Law No. 217/2003 on the prevention and combating of domestic violence, thereby aligning with European standards. This law provides a solid legal foundation for the swift intervention of authorities, serving as the main legal basis for the issuance of protection orders. One of the key innovations of Romanian legislation is the broad interpretation of the concept of "family member." Unlike the traditional definitions found in the Civil Code, Law No. 217/2003 also recognizes de facto relationships—such as cohabitation or stable emotional bonds—as having legal relevance in matters of protection against violence. Thus, not only spouses or biological relatives may benefit from protection, but also cohabiting partners, former spouses, guardians, or individuals caring for vulnerable persons outside of any professional obligation. For a court to issue a protection order, three essential conditions must be met cumulatively:

• the existence of a real and imminent danger; • the existence of an act of violence (physical, verbal, psychological, sexual, economic, social, or spiritual); • a relationship between victim and aggressor that falls within the extended notion of a family member.

Violence may take many forms—from verbal abuse and financial control to sexual assault or forced social isolation. The law thus enables a comprehensive intervention, adapted to the diverse manifestations of domestic abuse. The protection order, issued by the district court under emergency procedure, may include a wide range of restrictive measures against the aggressor, such as:

• eviction from the family home; • prohibition of any contact with the victim;
• maintaining a minimum distance from the victim and the places they frequent;
• prohibition of access to certain areas;
• mandatory psychological counseling or medical treatment;
• determination of the child's residence and payment of housing expenses for the victim.

These measures are valid for a maximum of six months, with the possibility of extension, and the decision is enforceable by law. The issuance process is governed by special procedural rules designed to ensure promptness and immediate protection. The request is heard in chambers, on an emergency basis, with the mandatory participation of the public prosecutor. Nevertheless, practitioners have frequently reported delays caused by overburdened courts, inefficient case management, or inconsistent interpretation of procedural rules. The 2014 thematic review conducted by the Judicial Inspectorate revealed a lack of coherence in scheduling and in communicating court decisions, which negatively impacted the effective implementation of ordered measures. In some cases, significant delays of up to one year occurred between the filing of a petition and the resolution of the case. The protection order represents an essential legal institution within the legislative framework for combating domestic violence. Through its flexibility and provisional nature, this mechanism enables effective intervention in crisis situations, helping to prevent particularly serious offenses. However, its effectiveness depends on the consistent application of legal provisions and the assumption of greater responsibility by the judicial system. It is therefore necessary to establish mandatory maximum time limits for the adjudication of petitions, to simplify procedures for the regularization and communication of judgments, and to ensure the continuous specialization of judges, prosecutors, and other stakeholders. Only through a clear and consistently applied legal framework can the protection order become a genuine legal shield for victims of domestic violence. A landmark moment in Spanish jurisprudence occurred in 1995, when the Supreme Court recognized for the first time that marital rape constitutes a criminal offense. In this legal context, prosecution may be initiated without a formal complaint from the victim. The judge has the authority to impose protective measures and to determine who shall remain in the family residence, but only when a separation or divorce proceeding has been initiated. Family courts occupy a central position within Spain's judicial system, being among the most important specialized courts. They handle a large number of cases, particularly in major cities, and were created to streamline the resolution of family law matters such as divorces, child custody, and alimony obligations. Their role is to examine and resolve disputes relating to family law, an area characterized by sensitivity and distinct rules from other branches of law. These courts operate at the first-instance level, meaning they represent citizens' first contact with the justice system in family-related issues. The main function of family courts is to resolve legal conflicts arising within family relationships. The most frequent cases involve marriage, filiation, guardianship, and custody. In matrimonial matters, family courts are competent at every stage—from the recognition of marriage and its legal effects to annulment, separation, or divorce. Another important function concerns guardianship, providing legal protection for minors or people lacking capacity. In cases of separation or divorce, family courts decide on child custody. The law provides that joint custody shall be granted if both parents request it by mutual agreement, in the best interests of the child. Even during proceedings, if the parents reach an agreement, the court must take the necessary measures to ensure its implementation. Victims who, due to assault, are unable to work for at least six months or who lack social protection receive financial assistance from the Spanish state. In the event of the victim's death, such benefits may be transferred to

dependents, typically the children. These benefits are granted only based on a final court decision, and their value is calculated according to the victim's income and the national minimum wage. If warranted by economic circumstances, victims may receive temporary aid pending the final decision; however, if the court subsequently determines that no crime was committed or the victim receives compensation from other sources, the state may recover the funds granted. Victim support is coordinated by the Ministry of the Interior through specialized offices. Within police departments, especially in major urban centers, there are dedicated units for domestic violence cases. Furthermore, in large cities, there are shelters for women who have left their homes due to family abuse. Domestic violence remains one of the most complex and persistent forms of violence affecting contemporary society, both in Romania and Spain. Despite each country's distinct cultural and legal frameworks, the phenomenon displays common characteristics, being deeply rooted in social, economic, and psychological dynamics that manifest within family or intimate relationships. A comparative analysis of the Romanian and Spanish legal systems shows that both countries have made significant progress in developing coherent and effective legislative frameworks for combating domestic violence. However, conceptual and operational differences remain, reflecting distinct levels of institutional maturity and integration of public policies. In Romania, the legal framework is built around Law No. 217/2003, supplemented by the Criminal Code and other related regulations. Romanian legislation has gradually adapted to international requirements, including new forms of violence such as psychological, economic, and, more recently, cyber violence. Nonetheless, practical implementation still suffers from shortcomings—particularly in the speed of proceedings, the effective protection of victims, and the efficiency of sanctions. Spain, by contrast, has developed a more integrated system with innovative legislation centered on the concept of "gender-based violence," enshrined in Organic Law 1/2004. This law not only regulates in detail the punishment of offenses but also establishes a comprehensive system of protection and multidisciplinary support for victims, encompassing specialized courts as well as economic, psychological, and educational measures. Although this model has sparked debates regarding its alleged lack of legal neutrality, its practical effectiveness is demonstrated by the increased reporting of cases and the expansion of protective measures. A key strength of the Spanish system lies in its emphasis on prevention and education, through school programs on gender equality, nationwide awareness campaigns, and proactive measures for the re-education of offenders. Romania, although it has begun implementing similar policies, remains in a transitional phase, facing shortages in resources and infrastructure needed to develop an effective intervention and prevention network. Another area of interest is the protection order. Although both countries regulate it as a provisional measure for victim protection, in Romania its application is often delayed by administrative bottlenecks and the lack of judicial specialization. In Spain, the protection order operates within a rapid and coordinated response system, where collaboration between courts, police, and social services is essential. In terms of procedural protection for victims, Spain offers a model of good practice by providing free legal aid, psychological support, and specialized shelters. Romania has made progress in this regard, but the availability and quality of such services vary significantly across counties due to the absence of a unified strategy

and an efficient monitoring and evaluation system.

In conclusion, the comparative study shows that Spain provides a valuable example of an integrated and proactive approach to combating domestic violence, while Romania is still in the process of legislative and institutional consolidation. Despite notable progress, significant challenges remain in ensuring effective law enforcement, professionalization of stakeholders, and adequate resource allocation. Continuous engagement by the state, civil society, and the educational sector is essential to build a culture of zero tolerance toward domestic violence. Only through a collective, systemic, and sustainable effort can true protection for victims and the eradication of this phenomenon be achieved.

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RESPECT FOR HUMAN DIGNITY – THE FUNDAMENTAL PRINCIPLE OF ROMANIAN AND EUROPEAN PENAL ENFORCEMENT LAW

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Abstract: *Dignity represents the foundation of the fundamental rights of every person, acknowledged as such by all documents concerning their protection. This paper aims to present, at both theoretical and jurisprudential levels, the ways in which human dignity is protected, guaranteed, and respected in the field of criminal enforcement law, being elevated to a fundamental principle under the provisions of Article 4 of Law no. 254/2013: "Penalties and measures involving deprivation of liberty shall be executed under conditions that ensure respect for human dignity." Alongside the prohibition of torture and inhuman or degrading treatment, the respect for human dignity also includes the states' obligation to protect the health of all persons deprived of liberty, by ensuring access to proper medical treatment and detention conditions that do not cause additional suffering to incarcerated individuals. Deprivation of liberty must not equate to deprivation of dignity. The paper will also analyze the case law of the European Court of Human Rights and European regulations, since human dignity is part of European Union law. The European Prison Rules REC(2006)2 of the Council of Europe are of particular importance, as they establish clear obligations for authorities responsible for the custody of detainees in member states, aiming to prevent violations of human dignity.*
All of these contribute, from a reparatory and protective perspective of criminal justice systems, to a greater respect for the human dignity of the individual, while also aiming to protect society and rehabilitate inmates, thus facilitating the achievement of re-education goals of the punishment.

Key words: *human dignity, detainees, penal enforcement law, jurisprudence*

1. Dignity – The Fundamental Principle of Human Rights

Human rights may be defined as universal guarantees enshrined in laws, treaties, and conventions, designed to protect the dignity, equality, and freedom of the individual

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against potential abuses committed by the state or by other persons.

Dignity appears explicitly in all instruments concerning the recognition and protection of human rights, as it constitutes the foundation of every person's fundamental rights; without its protection, the acknowledgment of other civil or political rights becomes merely illusory. At its core, dignity represents the need of every human being to be recognized and treated as a human by all others. The violation of human dignity entails the disregard of fundamental values—freedom, dignity, and equality—which are interdependent and inseparable from the human condition and the existence of the individual.

The central role of human dignity was acknowledged as early as 1948, upon the adoption by the United Nations of the Universal Declaration of Human Rights (Universal Declaration of Human Rights. Resolution 217 A (III; 1948). The concept of human dignity is incorporated in the preamble, which affirms that "the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Article 1 further establishes freedom, equality, and dignity as fundamental values of human rights, providing that "All human beings are born free and equal in dignity and rights." Article 5 explicitly reinforces the principle of protecting human dignity by prohibiting torture and cruel, inhuman, or degrading treatment or punishment.

Given the paramount importance of safeguarding human dignity, the International Covenant on Civil and Political Rights (ICCPR) (Resolution 2200 A (XXI); 1966a) of 16 December 1966 was adopted in accordance with the principles laid down in the UN Charter, precisely to reaffirm the inherent dignity and the equal and inalienable rights of all members of the human family. These rights constitute the foundation of freedom, justice, and peace in the world, deriving from the dignity inherent in the human person. The Covenant protects personal integrity, liberty, equality, and prohibits torture and degrading treatment.

Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations; 1966b), adopted on the same date, recognizes the need to protect those rights that stem from the dignity of the human being.

UN General Assembly Resolution 43/173 of 9 December 1988, establishing the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, provides that "all persons under any form of detention or imprisonment shall be treated with humanity and with respect for the inherent dignity of the human person."

The European Convention on Human Rights (ECHR) does not explicitly codify a right to human dignity; however, Article 3 explicitly guarantees it by prohibiting torture and inhuman or degrading treatment or punishment. The case law of the European Court of Human Rights is extensive in this respect, particularly regarding persons deprived of liberty or held in state custody, situations in which the state is obliged to respect and protect the dignity of all persons under its authority.

Furthermore, Article 1 of the Charter of Fundamental Rights of the European Union stipulates that human dignity is inviolable and must be respected and protected.

Comparable provisions appear in other international instruments, such as the

Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

In recognition of the need to protect and uphold human dignity, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted at the international level, establishing for the contracting states a set of positive and negative obligations aimed at both preventing and repressing torture and other practices that flagrantly violate human dignity.

At the European level, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was adopted, creating an extrajudicial mechanism intended to prevent such treatment of persons deprived of liberty, through cooperation with national authorities.

The Convention established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), whose mandate includes visiting places where individuals are deprived of liberty by a public authority and issuing reports containing recommendations to the respective state. The Committee operates under two fundamental principles: cooperation and confidentiality. Its purpose is not to condemn states, but to assist them in preventing ill-treatment of persons deprived of liberty.

At the national level, Romania recognizes and protects human dignity by granting it constitutional status. Article 1 of the Constitution provides that "Romania is a democratic and social state governed by the rule of law, in which human dignity, the rights and freedoms of citizens, the free development of human personality, justice, and political pluralism represent supreme values and are guaranteed."

Additional constitutional provisions concern the prohibition of torture or inhuman or degrading punishment or treatment (Article 22 paragraph 2), as human dignity constitutes a supreme value protected by the rule of law; likewise, freedom of expression may not infringe upon a person's dignity, honor, private life, or right to their own image (Article 30 paragraph 6).

Article 23 paragraph 2 of the Constitution establishes the conditions under which the competent state authorities may carry out searches, detentions, and arrests, the constitutional legislator providing that such measures "are permitted only in the cases and under the procedure provided by law," which must always be interpreted in conformity with Article 1 paragraph 3 of the Constitution.

The protection of human dignity is also ensured under criminal law, through the incrimination of specific offenses, as well as under civil law. Article 72 of the Civil Code stipulates that every person has the right to respect for their dignity; any infringement of a person's honor or reputation is prohibited without their consent or without observance of the limits established by the treaties and conventions to which Romania is a party.

2. The Need to Protect Human Dignity in the Enforcement of Sentences and Other Measures Involving Deprivation of Liberty

During the execution of custodial sentences within the penitentiary system, human

dignity may be frequently impaired. National and international regulations expressly draw attention to this risk and impose, as a preventive measure, the obligation that any person subjected to detention or imprisonment be treated with humanity and with respect for the inherent dignity of the human person (Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN General Assembly Resolution 43/173 of 9 December 1988).

This requirement stems from the fact that dignity constitutes the most sensitive sphere that delineates the boundaries of private life, interpersonal interactions, and the security and integrity of the individual. In many cases, the violation of human dignity serves as the initial cause of a chain of subsequent infringements of other human rights. It may even be asserted that human dignity functions as the primary limit on the freedom of others and on equality in rights.

Although any punishment inherently contains elements that may be perceived as humiliating, an inhuman or degrading punishment distinguishes itself from ordinary punishments by treating the individual as an object in the hands of public authorities, thereby infringing upon values related to dignity and the physical integrity of the person.

The assessment of the degree of suffering caused is a relative matter that depends on all the circumstances of the case, particularly the nature of the punishment, the context in which it was imposed, and the manner of its execution. Despite the fact that the limits of dignity are legally established, the concept nevertheless encompasses a wide range of subjective perceptions, since one's view of their own dignity—and of the dignity of others—is directly influenced by each person's system of values, both material and spiritual, as well as their experiences and living conditions. Consequently, the violation of dignity will be perceived differently depending on the religious, political, or cultural convictions, social status, level of well-being, and circumstances in which the act occurred, as well as on the identity of the offender and that of the victim.

The publicity of the execution of a sanction may also contribute to its degrading nature, although it is not a decisive factor, since humiliation may occur even in the eyes of the individual alone, without reference to third parties.

Any person subjected to detention must therefore be treated with humanity and respect for the dignity inherent in the human person.

In order for a sanction not to be considered inhuman or degrading, the primary obligation of respecting human dignity lies with state agents—those entrusted with supervising persons deprived of liberty. They must refrain from making expressions or gestures that are insulting, humiliating, degrading, or discriminatory and must ensure that the human dignity of detainees is not violated by other persons deprived of liberty through similar conduct.

Similarly, the state bears the obligation to respect the dignity of every person in its custody by ensuring detention conditions that do not infringe upon this fundamental right.

The obligations of states regarding the protection of the health of all persons deprived of liberty also fall within the broader framework of respecting human dignity. These obligations include ensuring access to appropriate medical treatment as well as detention conditions that do not cause additional suffering to incarcerated individuals.

Article 10 of the International Covenant on Civil and Political Rights provides that "All

persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person," thereby regulating for the first time matters concerning the execution of custodial sentences. The Covenant expressly states that persons held in pretrial detention must be separated from convicted persons; that minors in pretrial detention must be held separately from adults; and that their cases must be resolved with priority so that they remain deprived of liberty for as short a period as possible. Furthermore, the Covenant affirms the re-educational function of the penitentiary system, emphasizing that the penitentiary regime must include a system of treatment for convicted persons whose essential purpose is their reform and social reintegration.

2.1. Protecting the Human Dignity of Prisoners at the Level of the European Union

Respect for human dignity during the execution of criminal sanctions—particularly custodial sentences—has long constituted a significant element on the agenda of European institutions, giving rise to a series of special regulatory instruments. The deprivation of liberty inevitably causes psychological suffering; however, state authorities are under a strict obligation to ensure conditions that comply with the requirements of human dignity.

One of the first instruments adopted in this context is Recommendation No. R (99) 22 of the Committee of Ministers to member states concerning prison overcrowding and prison population inflation. Adopted on 30 September 1999 at the 681st meeting of the Ministers' Deputies, Article 18.1 provides that detention facilities, especially those intended for the accommodation of prisoners during the night, must respect human dignity and privacy and must meet minimum sanitary and hygiene standards, taking into account climatic conditions and, in particular, living space, air volume, lighting, heating sources, and ventilation.

Furthermore, order within penitentiaries must be maintained by complying with requirements of security, safety, and discipline, while simultaneously ensuring living conditions that respect the human dignity of prisoners. This requires providing a comprehensive and balanced program of activities, tailored to the applicable regime of execution, enabling prisoners to spend each day outside their cells for a period sufficient to ensure adequate human and social contact. Special attention must be given to individuals who have suffered physical, mental, or sexual violence (Article 49).

When searches are conducted, staff must be trained to carry out such measures in a manner that detects and prevents any attempt at escape or contraband, while respecting the dignity and personal belongings of prisoners. The Recommendation specifies that persons subjected to searches must not be humiliated by the procedure, which must be conducted only by staff members of the same sex. Prison personnel are prohibited from conducting searches involving bodily cavities; such intimate examinations may be performed solely by medical professionals (Article 54).

These provisions are reiterated in the Recommendation of the Committee of Ministers to member states on the European Prison Rules, REC(2006)2, adopted on 11 January 2006 at the 952nd meeting of the Ministers' Deputies, representing the

principal European regulatory framework governing the execution of custodial sentences.

Respect for human dignity is most critically required in the design and organization of detention spaces, particularly those intended for overnight accommodation. Such spaces must respect human dignity and privacy and meet minimum sanitary and hygiene standards, taking into account climatic conditions and, in particular, living space, air volume, lighting, heating, and ventilation. A well-designed penitentiary or juvenile detention center must provide positive and individualized conditions for persons in custody, ensuring respect for their dignity and privacy; all rooms must be adequately furnished, have access to natural light, and be properly ventilated.

2.2. Protection of the human dignity of prisoners under Romanian criminal enforcement law

Criminal enforcement law, an autonomous branch of criminal law, governs the manner in which criminal sanctions imposed by final judgments are carried out. Beyond the technical aspects related to enforcement regimes, a fundamental principle that must guide all measures adopted in this field is the respect for human dignity. This constitutes not merely a moral ideal, but a legal requirement expressly provided for in the Constitution of Romania as well as in the international treaties to which Romania is a party, as previously noted.

Thus, human dignity is elevated to the rank of a guiding principle within Romanian criminal enforcement legislation, as the entire regulatory framework is grounded in the fundamental interests of the human person, the protection of the human condition, and the establishment of limits on the punitive regime applicable to antisocial acts committed by individuals.

From its very first articles regulating the principles of the execution of custodial sentences and measures, Law No. 254/2013 stipulates that “penalties and custodial measures shall be executed in conditions that ensure respect for human dignity” (Article 4). Moreover, Article 5 of the same law expressly prohibits subjecting any person serving a sentence or custodial measure to ill-treatment, torture, or inhuman or degrading treatment.

Primarily, the dignity of persons deprived of liberty relates to accommodation conditions, which must be ensured in spaces that respect this principle, taking into account climatic conditions and, in particular, living space, air volume, lighting, heating sources, and ventilation.

Article 1 of the Order of the Minister of Justice No. 433/2010 approving the Minimum Mandatory Standards on the Accommodation of Persons Deprived of Liberty establishes that facilities intended for the accommodation of persons deprived of liberty must respect human dignity and meet minimum sanitary and hygiene standards. Accordingly, attention must be paid to climatic conditions, but especially to living space, air volume, lighting, heating, and ventilation. Both living quarters and other rooms must benefit from natural light and be equipped with systems ensuring artificial lighting, sanitary utilities, and heating installations. Existing detention facilities must ensure at least 4 m^2

per person for inmates in closed or maximum-security regimes, and at least 6 m^3 of air per person in semi-open or open regimes. Minors, young persons, pre-trial detainees, and persons for whom the enforcement regime has not yet been established are subject to the same 4 m^2 requirement.

National courts have likewise recognized the importance of dignity. For instance, in Decision No. 136/2015, the Constitutional Court of Romania held that "degrading treatment applied to persons deprived of liberty contravenes the international obligations assumed by the state." In criminal judicial practice, reparatory measures have been ordered in the form of sentence reductions for inadequate detention conditions, pursuant to Article 55^1 of Law No. 254/2013, introduced by Government Emergency Ordinance No. 13/2017.

Equally significant is the right of persons deprived of liberty to access medical treatment and receive healthcare at a level comparable to that which the state undertakes to provide to the general population. Although case law affords a degree of flexibility in defining the required level of medical assistance, it is consistently held that such care must be "compatible with the human dignity" of a person deprived of liberty while also accounting for "the practical requirements of detention."

Respect for dignity, however, is not limited to material conditions; it also involves treating the inmate as a person capable of rehabilitation. The state is obliged to provide educational programs, occupational activities, and psychological support. According to Article 10(1) of Law No. 254/2013, "the execution of custodial sentences aims to ensure public order and to prevent the commission of new offences through the re-education of convicted persons."

Other provisions in the special law also concern the protection of human dignity. For example, inmates have the right to wear civilian clothing; if they do not possess appropriate attire, the penitentiary must provide it in order to preserve the dignity of the individual.

3. Violation of Human Dignity – A Concise Examination of the Case-Law of the European Court of Human Rights

The European Convention on Human Rights contains no specific provisions concerning individuals serving custodial sentences. Nonetheless, the case-law of the European Court of Human Rights has consistently emphasized that the State must ensure conditions compatible with respect for human dignity for any person deprived of liberty, so that the execution of the sentence does not subject the individual to suffering exceeding the level inherent in detention.

Romania has been found in violation of Article 3 of the Convention in numerous cases, both with regard to detention conditions and with respect to the medical care afforded to prisoners. Likewise, in Muršić v. Croatia (2016), the Court reaffirmed that deprivation of liberty, although entailing restrictions on freedom, cannot undermine the essence of human rights and, implicitly, human dignity.

For treatment to be considered "degrading," it must humiliate or debase the individual, showing a lack of respect for—or diminishing—his or her human dignity. It is

sufficient that the victim perceives the treatment as humiliating, even if others do not share this perception. While the intention to humiliate is a relevant factor, the absence of such intent does not rule out a finding of a violation of Article 3 (Gäfgen v. Germany [GC], 2010; Ilaşcu and Others v. Moldova and Russia [GC], 2004). A punishment considered "degrading" and thus in breach of Article 3 must reach a certain level of humiliation and debasement, an assessment that is inevitably relative and dependent on all the circumstances of the case, particularly the nature of the punishment, the context in which it was imposed, and the manner of its execution (Tyrer v. the United Kingdom, 1978).

Most violations found against Romania concern overcrowded prisons, resulting in detainees being allocated living space below the minimum standards set by international regulations and by the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

The Court has observed in this line of cases that even in the absence of any intention by the authorities to humiliate or debase the applicants, this does not in itself exclude a finding of a breach of Article 3. It has therefore held that the conditions of detention—extremely limited personal space, often below 4 m^2; insufficient opportunities for daily outdoor exercise; restricted access to showers; lack of constant hot water; inadequate toilet access and privacy; poor ventilation; insufficient natural light; deplorable hygiene; absence of a separate dining area—constituted treatment of a severity exceeding the unavoidable level of suffering inherent in detention, amounting to degrading treatment in violation of Article 3 of the Convention.

Romania is not the only State facing persistent overcrowding in its prison system. The Court has issued several landmark judgments calling upon States to adopt measures aimed at improving detention conditions. By way of example: Vasilescu v. Belgium (2014), J.M.B. and Others v. France (2020), Samaras and Others v. Greece (2012), Tzamalis and Others v. Greece (2012), Al. K. v. Greece (2014), Iacov Stanciu v. Romania (2012), Mandić and Jović v. Slovenia (2011), Štrucl and Others v. Slovenia (2011), Shishanov v. Moldova (2015), and Petrescu v. Portugal (2019).

Despite certain reforms adopted by the respondent States, in many cases these measures have proven insufficient to remedy systemic problems and to ensure detention conditions that do not infringe the dignity of persons deprived of liberty. Consequently, the European Court has issued pilot judgments in this area against several States: Bulgaria (Neshkov and Others v. Bulgaria, 2015), Hungary (Varga and Others v. Hungary, 2015), Italy (Torreggiani and Others v. Italy, 2013), Poland (Orchowski v. Poland, 2009; Norbert Sikorski v. Poland, 2009), Russia (Ananyev and Others v. Russia, 2012), Romania (Rezmiveș and Others v. Romania, 2017), and Ukraine (Sukachov v. Ukraine, 2020).

Through these judgments, the Court reaffirmed that Article 3 requires States to ensure that any prisoner is held in conditions compatible with respect for human dignity and that, given the particularities of the prison environment, the individual's health and well-being are adequately protected.

For detention to fall under Article 3, the suffering or humiliation involved must go beyond the inevitable level inherent in the deprivation of liberty. Thus, the State must ensure that a person is detained in conditions compatible with respect for human

dignity, meaning that the manner of executing the custodial sentence must not subject the detainee to distress or hardship of an intensity exceeding the unavoidable level inherent in detention (Neshkov and Others v. Bulgaria, 2015; Muršić v. Croatia, 2016).

In additional judgments, the Court has stressed the obligation to protect human dignity in the prison environment by sanctioning the absence of measures preventing its violation. The Court has held, for example, that keeping individuals handcuffed in unnatural positions (kneeling, lying down, etc.) after immobilization is prohibited, as is exposing detainees in handcuffs in public areas or police premises to be filmed or photographed by the media.

In Bouyid v. Belgium [GC], 2015, the Court held that whenever a person is deprived of liberty or confronted with law-enforcement authorities, any conduct by those authorities that diminishes the individual's human dignity constitutes a violation of Article 3.

Moreover, access to adequately equipped sanitary and hygiene facilities is essential for maintaining inmates' sense of personal dignity, as hygiene and cleanliness are not only aspects of self-respect and respect for fellow inmates but are fundamental to preserving health. A truly humane environment is impossible without immediate access to a toilet or the ability to maintain one's body clean (Ananyev and Others v. Russia, 2012). Violations of dignity have also been found where detainees lacked privacy when using the toilet, being constantly visible to other inmates lying on their beds or to prison staff watching through inspection windows (e.g., Aleksandr Makarov v. Russia, 2009; Longin v. Croatia, 2012).

In Vasilescu v. Belgium (2014), the Court reiterated that deprivation of liberty does not justify a lack of access to activities designed to prepare inmates for social reintegration. In the same spirit, the European Committee for the Prevention of Torture (CPT) recommends that detention be organized around activity and social interaction, rather than isolation or repression.

4. Final Considerations

The dignity of the human person is not merely a fundamental right in itself but constitutes the very foundation of all fundamental rights. All the more so, the execution of any sentence—and especially of custodial sentences—must be centered around the respect for the dignity of the convicted person. The fact that an individual has committed an offence and is subjected to a sanction does not extinguish his or her fundamental rights; rather, it imposes an even greater responsibility upon the State. Only an enforcement system grounded in respect for the human being, oriented towards re-education and reintegration, can serve the needs of a genuinely democratic society.

The Court of Justice of the European Union has also affirmed, in its judgment of 9 October 2001 in Case C-377/98, Netherlands v. Parliament and Council, paras. 70–77, that the fundamental right to human dignity forms part of Union law, thereby once again underscoring its paramount importance.

The European Court of Human Rights has consistently held in its case-law that any

interference with human dignity strikes at the very essence of the Convention. Consequently, any conduct by state agents entrusted with the enforcement of the law—particularly when directed at persons in their custody and deprived of liberty—that diminishes human dignity constitutes a violation of Article 3 of the Convention.

Likewise, the Court has held that States are under a positive obligation to organize their penitentiary systems in such a way as to ensure respect for the dignity of persons deprived of liberty, irrespective of any financial or logistical difficulties (Muršić v. Croatia [GC], 2016; Neshkov and Others v. Bulgaria, 2015).

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PROTECTION AGAINST DISCRIMINATION THROUGH CRIMINAL LAW

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Abstract: *The study examines the impact of digitalization on contemporary forms of discrimination, emphasizing their immaterial and transnational character. It analyses the role of criminal law as an ultima ratio instrument in protecting equality of opportunity, focusing on relevant Romanian criminal provisions such as discriminatory abuse of office, incitement to hatred or discrimination, and the aggravating circumstance of discriminatory motive. The paper argues that criminal intervention should be limited to the most serious discriminatory acts, particularly those involving physical or psychological violence, complementing existing civil remedies and ensuring effective protection of victims.*

Key words: *discrimination, digitalisation, aggravating circumstances*

1. Introduction

In a general definition, discrimination means treating a person less favorably than another in a comparable situation, without an objective or reasonable justification, on the basis of a legally protected characteristic. This may be qualified as "negative" (unlawful) discrimination, and it is to be distinguished from situations that require differential treatment between persons who are not in comparable circumstances, where discrimination is in fact warranted as an absolutely necessary derogation from the principle of equality. The criminalization of discrimination and the establishment of a form of legal liability, regardless of rank, constitute a guarantee of the principle of equality before the law, enshrined in Article 16 paragraph (1) of the Constitution and subsequently reinforced by infraconstitutional legislation. At the legislative level, protection against negative discrimination is ensured, at the national level, primarily through non-criminal legislation, while the instrument of criminal law is employed only subsidiarily, in light of the *ultima ratio* character of criminal law. Thus, the main normative act is Government Ordinance No. 137/2000 on the prevention and sanctioning of all forms of discrimination, as subsequently amended by various

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legislative acts. This ordinance defines discrimination in Article 2 (Government Ordinance No. 137/2000), and establishes criteria such as race, nationality, ethnicity, religion, gender, sexual orientation, age, or disability, criteria that most often take the form of direct or explicit discrimination. However, Article 2 paragraph (2) also recognizes indirect or concealed discrimination, arising from provisions, criteria, or practices that are apparently neutral but place certain persons at a disadvantage, based on the criteria listed in Article 2 paragraph (1) of the Ordinance, in comparison with other persons. From a sanctioning perspective, Government Ordinance No. 137/2000 provides for administrative (contraventional) sanctions applicable to the various forms of discrimination it regulates. Article 2 paragraph (4) also includes a subsidiarity clause, stipulating that any active or passive conduct which, through its effects, unjustifiably favors or disadvantages, or subjects to unfair or degrading treatment, a person, a group of persons, or a community in relation to other persons, groups, or communities, entails administrative liability under the provisions of the Ordinance, insofar as such conduct does not fall within the scope of criminal law.

Another relevant normative act is Law No. 202 of April 19, 2002 (republished) on equal opportunities and equal treatment between women and men, which regulates the measures for promoting equality of opportunity and treatment between women and men, with a view to eliminating all forms of discrimination based on sex, in all spheres of public life in Romania. According to Article 4 letter (g) of the Law, discrimination based on sex means direct and indirect discrimination, harassment and sexual harassment of a person by another person at the workplace or in any other place where the person carries out professional activities, as well as any less favorable treatment caused by the refusal of such behavior by that person or by their submission to it. At the same time, the Law also provides for administrative offences (contraventions) in cases of violation of certain provisions, and similarly to Government Ordinance No. 137/2000 (the general legal framework in the field of discrimination) acknowledges the subsidiary nature of its regulation, stipulating in Article 36 that the breach of its provisions entails disciplinary, material, civil, administrative, or criminal liability, as applicable, for the persons responsible. A person who has been subjected to discrimination may submit a complaint to this authority or, moreover, may file a claim before the competent court, in accordance with common law, seeking material and/or moral damages, as well as and/or the removal of the consequences of the discriminatory acts by the person who committed them. Of particular relevance in employment relations, discrimination is prohibited under Law No. 53/2003 the Labour Code, which in Article 5 paragraph (1) stipulates that the principle of equal treatment applies to all employees and employers within employment relationships. The subsequent provisions define the forms of direct and indirect discrimination in this context, alongside workplace harassment. Thus, discrimination in employment relations is recognized on various grounds, including race, gender, disability, and age.

Finally, when the infringement of rights and legitimate interests reaches a degree of gravity that qualifies the act as a criminal offence, discrimination is sanctioned under the provisions of criminal law, which will be the subject of the following analysis.

2. Criminal Law Provisions for Protection against Discrimination

The principal normative act in criminal matters is the current Criminal Code (Law No. 286/2009), supplemented by criminal provisions contained in special laws. Thus, there are two mechanisms through which discrimination may be sanctioned: first, by the criminalization of specific discriminatory conduct as distinct offences; and second, by the establishment of general or special aggravating circumstances, or aggravated forms, in relation to other criminal offences. It should be noted, however, that under Romanian criminal legislation, discrimination is not regulated as an autonomous offence, but rather under this title:

a) *the aggravating circumstance of committing an offence on discriminatory grounds – article 77 letter (h) of the criminal code.*

As a factual circumstance regulated as a general aggravating factor, Article 77 letter (h) of the Criminal Code provides that committing an offence for reasons related to race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, chronic non-communicable disease, or HIV/AIDS infection, or for any other similar circumstances regarded by the perpetrator as causes of a person's inferiority in relation to others, constitutes an aggravating circumstance. This aggravating circumstance employs a mixed regulatory criterion for the forms of discrimination (conceptually derived from the body of the aforementioned civil legislation in the same field), by enumerating the principal forms of discrimination and supplementing them with a homogeneous analogy clause referring to other circumstances of a similar nature, regarded by the perpetrator as causes of a person's inferiority in relation to others.

In the case law of criminal justice authorities, this aggravating circumstance is relatively rare, even though, in practice, it occurs more frequently, particularly in offences motivated by ethnicity, most often involving persons of Roma origin. In any event, for this circumstance to be applicable, a mere generic reference containing discriminatory overtones, made incidentally or as a result of cultural inertia, is not sufficient. It must be proven, with certainty, that in the specific case the perpetrator committed the act driven by a form of discrimination based on one of the unlawful motives expressly provided by law.

For instance, in a relevant case concerning an attempted murder (Sălaj Tribunal, Criminal Division, Judge for Rights and Liberties, Criminal Order No. 115 of September 5, 2025), it was established that on August 31, 2025, around 1:00 a.m., in the context of a spontaneous conflict and motivated by the victim's Roma ethnicity, the defendant struck the victim several times with his fist in the head area, then grabbed a broken bottle with which he attempted to hit the victim in the head and chest, with the intention of taking his life , an outcome that was prevented due to the victim's act of self-defense. The victim defended himself with his left forearm, sustaining injuries requiring 40–45 days of medical care, absent complications. In the case at hand, the victim, an employee of a street cleaning company, observed that the defendant was littering and mocking the company's workers who were cleaning the area. The victim asked the defendant to stop throwing garbage on the ground, upon which the latter

began uttering insulting remarks, approached the victim, kicked the shovel the victim was using to collect trash, then grabbed him by the neck, punched him in the face, called him a "filthy gypsy," and threatened to kill him. Given that the defendant addressed the victim as a "filthy gypsy," it was determined that the act was committed on discriminatory grounds related to ethnicity, and therefore, the application of the aggravating circumstance provided under Article 77 letter (h) of the Criminal Code was warranted.

Similarly, but on grounds related to Hungarian ethnicity, the case prosecutor, and subsequently the first-instance court, found that on September 19, 2020, around 8:00 p.m., the defendant, while on a forest road and driven by feelings of hatred toward persons of Hungarian ethnicity, threatened the victims with death and acts of violence, wielding a bat and a box cutter. In the same context, he struck one of the victims, motivated both by the victim's ethnic background and the family's modest financial situation, calling the victim "poor" and hitting him on the head with the bat, causing injuries requiring two to three days of medical care. Upon re-examining the case on appeal (Cluj Court of Appeal, Criminal and Juvenile Division, Criminal Decision No. 1357/A of August 5, 2025), *the* Cluj Court of Appeal set aside the aggravating circumstance of discrimination, reasoning that if the motive for the offence had indeed been ethnicity, the defendant would have mentioned it from the outset. Several minutes of the argument were recorded on video or audio, and no reference to ethnicity was made. The fact that the defendant eventually referred to "gypsies" and "hungarians" was considered merely an additional insult directed at the victims. Both the threats and the physical assault occurred well before this racist remark and were unrelated to the victims' ethnicity, being instead connected, as previously noted, to issues concerning land use and agricultural disputes. Furthermore, the victim's statement that the defendant had approached him with the words "I'll kill you, Hungarian" was not supported by evidence.

In another case from the relevant jurisprudence of the Cluj Court of Appeal, an offence committed on the grounds of religious discrimination was identified (Cluj Court of Appeal, Criminal and Juvenile Division, Criminal Decision No. 934/A of June 5, 2024). The defendant, M., was indicted and convicted at first instance for the offence of assault or other acts of violence, provided under Article 193 paragraph (1) of the Criminal Code, in conjunction with Article 77 letter (h) of the Criminal Code. It was established that on October 22, 2019, around 6:40 p.m., while in the *Iulius Mall* commercial complex in Cluj-Napoca, the defendant physically assaulted the victim, G., while she was performing a prayer specific to the Islamic faith, by forcefully grabbing her by the back of the neck and then striking her twice with his fist in the abdominal area, the act being motivated by the victim's adherence to the Islamic religion.

In fact, on October 22, 2019, around 6:35 p.m., while inside the *Iulius Mall Shopping Center*, the injured party went to a more secluded area in order to perform his prayer, as he was of Islamic faith and required to pray five times a day. In order not to provoke Romanian citizens, he chose a less crowded place on the first floor, between the Marty restaurant and the IPB stationery shop. He placed his backpack in front of him and began the prayer ritual, standing still for a few moments with his hands near his

abdomen, then bowing on his knees and touching his forehead to the backpack placed before him. After a few minutes, the injured party was approached by a male individual, later identified as the defendant, M., who forcefully grabbed him by the back of the neck, insulted him personally in English, and also uttered insults directed at Allah, then struck him with his fist in the right abdominal area. The injured party asked the attacker in English whether he was a security guard at *Iulius Mall* or a police officer, while stepping back, but the assailant did not answer and instead approached him again, asking where he was from and hitting him once more in the same area. The victim replied that he was from Egypt, whereupon the aggressor asked what he was doing in Romania; when the victim answered that he was a programmer, the aggressor told him to "go back to your country" and kicked the backpack lying on the floor.

A witness heard in the case stated that while the defendant was approaching the injured party, he asked him in English, "What are you doing here? Do you have any intentions? Are you planning to do something?" and demanded that he leave the country. From the documents attached to the case file, including articles from the local press, it resulted that the defendant was a supporter of the "Noua Dreaptă" (New Right) movement and was publicly known as a critic of immigration by persons adhering to the Islamic faith. The court found that the witness had also recognized the defendant, knowing him from various public demonstrations of a nationalist character in which the latter had participated, a fact he reported both to the police and in court. Consequently, the defendant's conduct and public expressions were held to attest to his hatred toward Muslims.

In his defense, the defendant justified his conduct by claiming that he intended to check whether the assaulted person was carrying weapons or wearing an explosive vest, as he believed that the latter was about to commit a terrorist attack. The defendant stated that he had this suspicion because he had seen the victim praying in a public space and noticed that he had "something" in his backpack. Knowing that the man belonged to the Islamic faith, the defendant declared that "radical representatives (of the Islamic religion) usually perform a similar ritual in a public place before becoming martyrs, namely by committing suicide with the intention of killing as many people as possible along with themselves." On this basis, the defendant claimed he believed it necessary to intervene in order to prevent an attack.

The court found that the applicability of the aggravating circumstance provided under Article 77 letter (h) of the Criminal Code resulted from the corroboration of the evidence administered in the case, consisting of documentary evidence and the statements of the injured party, a witness, and the defendant himself. These demonstrated that the motive underlying the offence was the perpetrator's contempt toward persons belonging to the Islamic faith. The defendant believed that the injured party was about to commit a terrorist attack, basing this assumption solely on the victim's appearance as a person of foreign origin and on the fact that he was praying in the manner specific to Muslims, in a secluded area of a public space.

In a similar vein, in another case (Bucharest District Court, Sector 2, Criminal Division, Judge for Rights and Liberties, Criminal Order of August 27, 2025) also concerning the offence of assault, it was established that on August 26, 2025, around 10:30 p.m., while

in Bucharest, at the intersection of Colentina Road and Teiul Doamnei Street, Sector 2, the defendant, acting out of racial and national motives and with the purpose of compelling the injured party to leave the country, committed acts of physical violence against the victim, H., a citizen originally from Bangladesh, striking him with his fist in the facial area and thereby causing traumatic injuries that required one to two days of medical care for recovery.

b) *the criminal offence as an instrument of protection against discrimination*

From among the criminal provisions that directly address discrimination, the following may be cited by way of example:

b[1]) **abuse of office (equivalent form) by discrimination –** article 297 paragraph (2) of the criminal code.

Within the scope of the good-faith exercise of duties by public or private officials, Article 297 paragraph (2) of the Criminal Code (corresponding to Article 247 of the 1969 Criminal Code[1]) provides that the act of a public official who, in the exercise of his or her official duties, restricts the exercise of a person's rights or creates for that person a situation of inferiority on grounds of race, nationality, ethnic origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, chronic non-communicable disease, or HIV/AIDS infection, constitutes a criminal offence punishable by imprisonment from 2 to 7 years and by the prohibition of the right to hold public office.

This normative provision must be correlated with the basic rule established in paragraph (1) of Article 297 of the Criminal Code, which following the intervention of the Constitutional Court through Decision No. 405/2016 and the subsequent legislative amendment introduced by Law No. 200/2023, sets forth the requirement that the public official commits the act in the exercise of his or her official duties, either by failing to perform an act required by a law, a government ordinance, an emergency government ordinance, or another normative act that, at the time of its adoption, had the force of law, or by performing such an act in breach of a provision contained in such a normative act, thereby causing damage or harm to the rights or legitimate interests of a natural or legal person.

In practice, it is generally accepted that under the first normative form, the active subject, without any legal justification, restricts or prevents a person from exercising a right provided by the Constitution or by a special law, in whole or in part. The restriction of the exercise of a person's right may result from any act or omission depriving that person of the ability to exercise that right through the performance of legal acts. In the second normative form of abuse of office, the one under analysis, the perpetrator, taking into account a person's belonging to a particular race, nationality, ethnic origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, chronic non-communicable disease, or HIV/AIDS infection, creates for that person a situation of inferiority, that is, a situation worse than that of others, thereby violating the constitutional principle of equality before the law enshrined in Article 16 of the Constitution. To fulfill the material element of the offence of abuse of office, in either of its forms, it is required that any of the incriminated acts be committed by a public

official in the exercise of his or her official duties, or by a person who performs, permanently or temporarily, with or without remuneration, a public service, during or in connection with the performance of those duties.

Likewise, in judicial practice it has been held that, with respect to the assimilated form of the offence of abuse of office, the motive consisting of hatred based on race, nationality, ethnic origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, chronic non-contagious disease, or HIV/AIDS infection, must be present both in the restriction of a person's exercise of rights and in the creation of a situation of inferiority. In the absence of such a motive, the provisions of Article 297 paragraph (2) of the Criminal Code cannot be deemed applicable (Bucharest District Court, Sector 2, Criminal Division, Criminal Order of July 12, 2024).

In court practice, cases involving indictment and prosecution for the offence of abuse of office with a discriminatory motive are rare, as such proceedings are most often dismissed by means of case closure orders. In a case (Cluj-Napoca District Court, Criminal Division, Criminal Order No. 263 of February 28, 2025) the petitioner M.E., employed by *Babeș-Bolyai* University since November 2004 as a financial administrator within the Human Resources Department, was diagnosed with cancer in May 2019. She benefited from one year and six months of medical leave and was subsequently classified as having a disability. Upon returning to work, she reported instances of marginalization and harassment by her hierarchical superiors, R.M. and R.I., submitting complaints to the Rector, the Ethics Committee, and the University Ombudsman. In May 2022, while disciplinary proceedings against her superiors were ongoing, the director, M.R., ordered the elimination of the position held by M.E., without the approval of the Senate or the Administrative Council, while maintaining a temporary position occupied by another person. Consequently, M.E. was dismissed, and her request for transfer to another position was denied. She subsequently notified the Cluj County Directorate for Social Assistance and Child Protection (DGASPC) and the National Council for Combating Discrimination (CNCD), alleging unfair dismissal and discrimination. By its final judgment of November 3, 2022, the Cluj Tribunal annulled the dismissal decision, ordered her reinstatement in the same position, and granted compensation for lost wages.

After her reinstatement, M.E. claimed that she had been subjected to continuous abusive and discriminatory treatment aimed at pressuring her to leave "voluntarily." However, the criminal investigation authorities ordered the closure of the case, finding no indication that the alleged acts were motivated by her disability. The preliminary chamber judge upheld this decision, noting that the conflicts between the petitioner and her superiors pertained to employment relations and could be examined within other branches of law, rather than through criminal proceedings, in accordance with the *ultima ratio* principle of criminal law.

From a legislative standpoint, it should be noted that a particular form of abuse of office is also encountered in the offence of abusive conduct as provided under Article 296 of the Criminal Code, when the act is committed on discriminatory grounds. An independent and specific, yet collective, form of abuse is represented by the offence of **genocide**, regulated under Article 438 paragraph (1) of the Criminal Code, which criminalizes the commission, with the intent to destroy, in whole or in part, a national,

ethnic, racial, or religious group, of any of the following acts: a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) subjecting the group to living conditions calculated to bring about its physical destruction, in whole or in part; d) imposing measures intended to prevent births within the group; e) forcibly transferring children of the group to another group. This offence is punishable by life imprisonment or by imprisonment from 15 to 25 years, together with the prohibition of certain rights. By correspondence, one may also refer to one of the forms of **crimes against humanity**, as provided in Article 439 paragraph (1) letter (g) of the Criminal Code, consisting in the persecution of a group or a particular collectivity by depriving them of fundamental human rights or by severely restricting the exercise of such rights, on political, racial, national, ethnic, cultural, religious, or sexual grounds, or based on other criteria recognized as inadmissible under international law.

For example, in jurisprudence, the defendant A.V. was sentenced to 20 years of imprisonment for the commission of the offence of *inhumane treatment*, in its continued form, as provided under Article 358 paragraphs (1) and (3) in conjunction with Article 41 paragraph (2) of the 1968 Criminal Code. In fact, it was established that between July 1, 1956, and April 13, 1963, in his capacity as commander of the Râmnicu Sărat Penitentiary, the defendant subjected, on political grounds, the community of detainees considered "counterrevolutionaries" to inhumane and degrading treatment, physical and psychological torture, as well as acts of extermination. These acts, committed systematically and over a prolonged period, consisted of starvation, deprivation of medical assistance, exposure to cold and squalid conditions, beatings, abusive disciplinary sanctions, and the complete isolation of prisoners. As a result, six of the detainees died in conditions of extreme suffering (High Court of Cassation and Justice, Criminal Division, Criminal Decision No. 51/A of February 10, 2016).

b[2]) **incitement to hatred or discrimination –** Article 369 of the Criminal Code.

According to Article 369 of the Criminal Code (regarding incitement to violence, hatred, or discrimination), the act of publicly inciting, by any means, to violence, hatred, or discrimination against a category of persons or against an individual belonging to a particular category of persons defined on grounds of race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, chronic non-communicable disease, or HIV/AIDS infection, is punishable by imprisonment from 6 months to 3 years or by a fine.

Article 369 of the Criminal Code was recently amended by Law No. 258/2023 (Official Gazette No. 871 of September 28, 2023), which expanded the material element of the offence. The amendment was adopted in order to align the incrimination with the requirements set forth in Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law. Following this amendment, the condition previously introduced by Law No. 170/2022 was removed, namely, the requirement that the discriminatory criteria enumerated in the article be regarded by the perpetrator as causes of a person's inferiority in relation to others. This additional requirement had previously restricted the scope of application of the Framework Decision.

An examination of judicial case law reveals a certain reluctance on the part of criminal investigation authorities to document and prosecute the offence referred to above, with relatively few cases being brought to trial, despite the fact that, in recent years, most such acts have been committed through electronic communication platforms. For instance, in one case (Craiova District Court, Judge for Preliminary Chamber Proceedings, Criminal Order of May 15, 2025) the court ordered the commencement of trial against a defendant charged with the offence provided under Article 369 of the Criminal Code. The charge concerned the fact that, based on the same criminal resolution, on multiple dates, the defendant, using the social network Facebook and the website https://www.incorectpolitic.com/, publicly posted videos inciting his followers to hatred against Jewish people. It was further established that, through the same online platforms, the defendant publicly disseminated videos promoting antisemitic ideas, conceptions, and doctrines, asserting that Jewish people are responsible for Romania's social problems, that they have historically harmed the Romanian state and undermined Romanian history, and that they seek to destroy other nations, while invoking Adolf Hitler's actions against Jews.

In another, more recent case (Bucharest District Court, Sector 2, Judge for Preliminary Chamber Proceedings, Criminal Order of April 29, 2025), the court ordered the commencement of trial against a defendant for the same offence, finding that on December 1, 2024, the defendant posted on the social network Facebook the message: *"With some crowbars and axes against those scoundrels,"* which incited the commission of acts of violence against the political opponents of Călin Georgescu, a candidate in the 2024 Romanian presidential elections.

b[3]) **normative form in the case of other offences –** Torture (Article 282 of the Criminal Code).

According to Article 282 paragraph (1) letter (d) of the Criminal Code, the act of a public official performing a function involving the exercise of state authority, or of any other person acting at the instigation of, or with the express or tacit consent of such an official, who intentionally inflicts severe physical or mental suffering upon another person, *inter alia* on grounds based on any form of discrimination, shall be punishable by imprisonment from 2 to 7 years and by the prohibition of certain rights.

4. Conclusions

As a general conclusion, at the level of criminalization, negative discrimination is sanctioned both through criminal legislation and, more prominently, through secondary legislation, in Romanian law as well as in the legal systems of other European states. Conversely, at the national jurisprudential level, there is a relatively limited number of cases addressing discrimination, whether in relation to the application of the general aggravating circumstance or to specific offences committed with such a special discriminatory motive.

The transition to the digital age has, among other effects, exacerbated certain discriminatory behaviours, with electronic platforms providing an accessible and frequently used means of materializing, sometimes instantaneously, discriminatory motives, often serving as a prelude to more serious offences (such as blackmail, child pornography, etc.). The adaptation of judicial authorities to new forms of cybercrime, including those driven by discriminatory motives, appears to have taken place; however, this progress should also be reflected in judicial case law, since without the active involvement of the judiciary, the voluntary fight against discrimination remains theoretical and illusory.

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ENVIRONMENTAL JUSTICE AND THE PROTECTION OF HUMAN DIGNITY: LEGAL CHALLENGES AND OPPORTUNITIES UNDER THE NEW COUNCIL OF EUROPE CONVENTION

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Abstract: *The Council of Europe's Convention on the Protection of the Environment through Criminal Law represents an innovative instrument within the international legislative framework, with the potential to enhance the protection of the ecosystem and the respect for human dignity. This article aims to examine, through the analysis of recent cases of environmental degradation, the main shortcomings that the Convention seeks to address and the legal mechanisms established to do so. It demonstrates that the provisions contained in the Convention can serve as catalysts for broader global enforcement, ultimately benefiting populations and safeguarding their dignity.*

Key words: *Environmental Justice, Human Dignity, Council of Europe, Criminal Law, Legislative Enforcement*

1. A New Convention as a Response to the Environmental Crisis

On 14 May 2025, the Council of Europe's Committee of Ministers adopted the Convention on the Protection of the Environment through Criminal Law (hereinafter called 'the May 2025 Convention'). This represents a significant step forward in safeguarding human dignity and falls within the broader framework of what is recognized as the protection of human rights.

In recent years, this perspective has been reinforced at the international level: first, by the United Nations Human Rights Council through Resolution 48/13 in 2021 (UN Human Rights Council, 2021), and subsequently by the United Nations General Assembly through Resolution 76/300 in 2022 (UN General Assembly, 2022), both of which formally recognized the human right to a clean, healthy, and sustainable environment.

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First and foremost, it is worth noting that the preamble of the May 2025 Convention itself explicitly states that the member States and governments of the Council of Europe "*declared their commitment to strengthening their work at the Council of Europe on the human rights aspects of the environment, to identifying the challenges raised by the triple planetary crisis of pollution, climate change and loss of biodiversity for human rights, and to contributing to the development of common responses thereto*" (Council of Europe Convention, 2025, p. 1). It is precisely on this triple planetary crisis that the present article intends to focus, in order to demonstrate - also through reference to previous cases of environmental degradation - the essential role of such a Convention in addressing the interconnected crises of pollution, climate change, and biodiversity loss. This need arises not only for the protection of the environment itself, but also for the preservation of human dignity.

Indeed, it is widely acknowledged across multiple fields, including legal scholarship and jurisprudence, that an attack on the environment simultaneously constitutes an attack on human dignity, irrespective of the country in which it occurs (Carrillo-Santarelli and Seatzu, 2025, p. 6; Palarczyk, 2023, p. 193; Spijkers, 2022).

From a legal standpoint, the objective of the May 2025 Convention is to overcome the limitations of Convention No. 172 of 1998 on the Protection of the Environment through Criminal Law, which never entered into force, having been ratified only by Estonia and requiring a minimum of three ratifications (Council of Europe Convention, 1998).

Pursuant to Article 53 of the May 2025 Convention, it will enter into force once ten states - including at least eight members of the Council of Europe - have ratified it (Council of Europe Convention, 2025, p. 16). If achieved, it would become the first legally binding international instrument capable of addressing the recent and emerging challenges posed by the escalating degradation of the ecosystem.

As stated in its Explanatory Report, the Convention was conceived in response to the recognition that "*environmental crime can have devastating impacts on environmental quality, biodiversity and natural resources but also on human health*" (Council of Europe Convention, Explanatory Report, 2025, p. 2). This clearly illustrates the connection with human dignity, considering that "*single human rights are practical implications of human dignity*", where dignity is understood as the intrinsic value that makes every human being worthy of treatment that allows him or her to realize their human potential and live in peace with themselves (Kuçuradi, 2019, p. 11).

2. Environmental Degradation and the Violation of Human Dignity in Italy Prior to the May 2025 Convention: An Overview of the Key Challenges

In order to understand the actual usefulness of the May 2025 Convention and its potential impact on the protection of the environment and, consequently, on the safeguarding of human dignity, it is necessary to analyze several cases of environmental damage that occurred prior to the adoption of the Convention. In this way, it becomes possible to recall the critical events of the past and assess whether the May 2025 Convention could effectively provide remedies for such situations. The selected period of analysis focuses on two incidents that took place in Italy.

2.1. The 'Miteni' Case

The first and most recent one is the so-called Miteni case, in which the company Miteni was convicted at first instance by the Court of Assizes of Vicenza, Italy, in May 2025 for several criminal offences, including environmental pollution and water poisoning (Miteni Judgment, 2025; Kaldor, 2025). The conviction resulted from the discharge of highly polluting substances known as PFAS, also referred to as 'forever chemicals' because of their persistence in the environment and the serious harm they cause to human health, including the development of diseases and disorders such as cancer and diabetes (Vasiliou, Bilott, 2025), but also psychological issues (Menegatto, Lezzi, Musolino, Zamperini, 2022), which can infringe upon the dignity of human beings. This case is particularly relevant as it illustrates a clear violation of human dignity affecting a wide number of individuals living in the surrounding areas.

Firstly, although environmental legislation existed - and evolved over time - it was systematically disregarded in favor of economic interests. As a result, the damage extended not only to individuals but to an entire community - across the Italian provinces of Vicenza, Padua, and Verona - and even to one of the largest aquifers in Europe (Biggeri et al., 2024).

This reveals one of the main deficiencies that the Council of Europe's Convention aims to remedy: ensuring that human dignity is fully protected through effective environmental criminal law not only in Italy but also in other parts of the world where PFAS discharges - or pollution from other substances - may occur. It is not sufficient that national legislation merely exists in this field. What must be ensured, first and foremost, is the adequacy of such legislation - with all the challenges that the concept of 'adequacy' entails - and, secondly, the existence of genuine mechanisms of enforcement. Knowing the serious consequences of PFAS discharges on both the environment and human health, and nevertheless choosing to ignore them for years, can only be interpreted as a profound disregard for human dignity.

Secondly, the issue lies in the limited awareness within society regarding environmental issues - such as pollution - that inevitably affect individuals and their dignity, as well as in the insufficient effectiveness of existing norms. This ineffectiveness has long been debated in Italian legal scholarship, where one of the main concerns identified has been the lack of clarity in Article 452-*bis* of the Italian Criminal Code, which defines the offence of environmental pollution (Napoletano, Acampora, Masi, Verginelli, 2021, p. 6; Ruga Riva, 2016). From the perspective of deterrence, a legal provision that lacks precision hinders its practical enforcement, making it difficult to obtain convictions for crimes, particularly those that are complex to prove.

The ultimate consequence, however, falls upon individuals, whose protection becomes secondary, leading to the conclusion that human dignity itself is relegated to the background.

2.2. The 'ILVA' Case

The second event examined is the so-called ILVA case in Taranto, concerning a company primarily engaged in the production and processing of steel. Established in

1961, ILVA built a large industrial complex in Taranto, which became the largest steel production facility in Europe (Vagliasindi and Gerstetter, 2015, p. 7).

For the purpose of assessing the violation of human dignity it is important to note that the company pursued a profit-driven and cost-saving approach, despite being aware of the serious risks associated with its production methods. This approach, however, stands in contrast with Article 41 of the Italian Constitution, which establishes that private economic enterprise cannot be conducted in a manner that conflicts with social utility or causes harm to health, the environment, safety, freedom, or human dignity (Italian Constitution, 1948). It is precisely this aspect - the harm to the environment and human dignity - that the May 2025 Convention aims to prevent today.

The company's methods generated emissions of various atmospheric pollutants, which not only caused significant environmental degradation in the surrounding area but also resulted in severe public health consequences. The local population experienced higher rates of respiratory diseases and cancer compared to national averages (Pirastu, lavarone, Pasetto, Zona, Comba, 2011, p. 137; Bisceglia et al., 2005). The outcome was a clear violation of human dignity and of the fundamental human right to health.

This leads to a key question that the present analysis seeks to address: How might the provisions contained in the May 2025 Convention shape more effective prevention and accountability mechanisms in the future in the whole world? The following reflections aim to analyze this issue.

3. Can the May 2025 Convention Resolve the Issues Identified in the Miteni and ILVA Cases and Ensure Greater Respect for Human Dignity?

At this point, the May 2025 Convention enters into play as a potentially transformative instrument for addressing the structural weaknesses briefly exposed by the Miteni and ILVA cases in the protection of both the environment and human rights, while also serving as a warning for future cases across the world.

3.1. Global applicability, thematic scope, and Environmental restoration

From a legislative standpoint, the Convention introduces a series of obligations that could substantially enhance the enforcement of environmental criminal law if properly implemented at the national level, not only in those States that currently lack a comprehensive legal framework in this field, but also in those where existing legislation proves to be inadequate or ineffective.

For instance, consider air quality. In both Europe and other parts of the world, there are many areas with high pollution levels and very low air quality indices, which correlate with increased disease incidence and a reduced quality of life (Worldwide Air Quality Report 2024, 2025). The May 2025 Convention, as confirmed by Article 53, is open to all countries worldwide.

Global implementation - or even widespread adoption - could yield broad and exponential benefits, since environmental issues do not follow national borders.

Compliance with environmental rules in one state would not only benefit that state but also the neighboring countries. This is particularly relevant in cases of severe environmental concern, such as air pollution in India, Bangladesh or Pakistan (Worldwide Air Quality Report 2024, 2025), or the living conditions of the Rohingya minority at the Myanmar-Bangladesh border in Cox's Bazar, where human dignity is manifestly compromised (Howlader, Nesa, Islam, 2025, p. 10).

In the May 2025 Convention, Articles 12 to 30 establish a catalogue of criminal offences covering among others unlawful pollution, fluorinated greenhouse gases, illegal management of waste, the operation of dangerous installations, and the unlawful trading in protected wild fauna or flora. Some of these provisions directly encompass the type of conduct that occurred in both Miteni (the discharge of PFAS into soil and groundwater) and ILVA (the emission of harmful substances from industrial facilities).

The drafters of the Convention introduced an important tool from the perspective of environmental protection, demonstrating due attention to human rights and, consequently, to the dignity of every living being. Indeed, the Convention extends criminal liability to situations where conduct is likely to cause serious harm to individuals or substantial damage to the environment, thereby allowing for earlier and more preventive intervention. This approach aligns with the precautionary principle and reflects the broader rationale that environmental criminal law should primarily serve as a preventive function, anticipating harmful events before they occur and thereby avoiding damage that often proves extensive and irreversible (such as wildfires, environmental pollution, climate change, or deforestation).

Furthermore, the Convention establishes enforcement mechanisms, requiring under Article 34 the introduction of corporate liability. This provision seems appropriate and consistent with the genuine goal of environmental protection, given that major environmental disasters, such as the ILVA and Miteni cases in Italy, resulted from industrial activities for which adequate safeguards may still be lacking in other countries.

Article 35 is also significant, mandating the adoption of "*effective, proportionate and dissuasive sanctions, taking into account the seriousness of the offence*". The May 2025 Convention further clarifies in Article 35(4) that States Parties should "*include among the sanctions and measures applicable to natural and legal persons the reinstatement of the environment*". While this may appear obvious in countries like Italy, where environmental remediation is already provided for, it is not the case in many other states. Given that environmental harm transcends territorial boundaries, the emphasis on remediation aligns closely with the broader goal of protecting human dignity.

3.2. Towards an improved awareness of Environmental risks

To ensure effective implementation, it is essential to have a thorough understanding of the critical issues involved in environmental protection. For this reason, the second theme concerns the widespread lack of awareness among the population regarding the risks that arise not only for those living near areas affected by high levels of air emissions or waste discharge into soil or water, but also from the risks to human health that accompany any activities connected with or dependent upon the environment.

The May 2025 Convention might serve as an instrument to compensate for this lack of awareness in two principal ways.

The first, of a sociological nature - and perhaps the most significant in terms of its positive implications for human dignity - is the dialogue in the field that naturally follows the adoption of such a Convention. This discourse tends to spread to various sectors of society (e.g. policymakers, medical professionals, university students, and even school students). It is not a matter of merely amending a single article of domestic legislation.

In some States, which currently lack adequate regulation in this field, such as Uruguay which is in the process of creating new articles to be included in its criminal code, it would entail a genuine implementation or rethinking of environmental law (Vicente, 2025; Uruguayan Parliament, 2025; Iglesias Rossini, 2024). In this case, adhering to and implementing the May 2025 Convention would allow for greater respect for both the environment and human dignity in Uruguay, especially considering the evident absence - within the Uruguayan draft bill - of several provisions included in the Council of Europe Convention, as well as the incomplete formulation of those that are currently provided for in the draft legislation (Uruguayan Parliament, 2025).

The same applies to those States that already possess environmental legislation, yet one that proves insufficient in practice. Such a process of reconsideration would inevitably generate public debate, reaching a significant portion of the population and enabling citizens to understand, if not fully, at least more clearly, the real consequences of environmental degradation.

The significance of this cannot be overstated: one need only consider the damage that might have been avoided in the Miteni or ILVA cases if the majority of the population had been aware, from the outset, of the actual effects of those emissions or discharges.

Bringing this reflection into a contemporary context - both in 2025 and for the future - the same applies to the training of artificial intelligence (AI). Most of the population, if not nearly all, is unaware of the environmental and health risks associated with AI training. Although this is not the place for an in-depth discussion of the matter, it is sufficient to note that several studies have linked AI training processes to increased air pollution and to higher rates of illness among vulnerable populations living near data centers, those industrial facilities essential for AI model training (Morrison et al., 2025; Han, Wu, Li, Wierman, Ren, 2024).

If the public, policymakers, and legislators were aware of these risks, they could, within their respective spheres of influence, contribute to the implementation of the measures envisaged by Article 18 of the May 2025 Convention, which provides that "*Parties shall take the necessary legislative measures to establish as a criminal offence under their domestic law, when committed unlawfully and intentionally, the production, placing on the market, import, export, use or release of fluorinated greenhouse gases, or the placing on the market or import of products and equipment containing or relying on such gases*" given the high levels of gas emissions produced by data centers and the relatively limited attention currently devoted to this issue, even in countries with extensive environmental protection legislation, such as Italy.

The second aspect, closely connected to the first, is legal in nature and arises once awareness has been achieved. When society becomes conscious of the need for protection - whether against new phenomena (such as AI training) or against recurring

harms (such as PFAS discharges into water and soil) - there can no longer be any justification for enterprises that continue to exceed legal emission limits.

The remaining challenge lies with the legislator, who must set limits that truly reduce risks to human health and protect the environment through implementing legislation that is as clear and simple as possible. When laws lack clarity, judges struggle to apply them, and citizens cannot tell when emissions become unlawful.

Notably, as further confirmation of the usefulness of the May 2025 Convention, Article 11, entitled 'Awareness raising', directly aligns with the reasoning developed thus far. It provides that "*Parties shall take the necessary measures to promote or organise information and awareness-raising campaigns relating to preventing and combating environmental crime, where appropriate, in co-operation with civil society and non-governmental organisations*" and they should also "*take the necessary measures to ensure the wide dissemination among the general public of information on measures available to prevent offences established in accordance with this Convention*". It follows that greater public awareness of environmental issues can lead to a more effective respect for human dignity.

3.3. Defining Environmental Damage: How the May 2025 Convention Can Contribute?

Within the broader context of persistent non-compliance and violations of environmental protection provisions, a third and additional technical challenge arises, one that the Council of Europe's May 2025 Convention seeks to address. Specifically, this concerns the lack of clarity in certain environmental protection norms, which inevitably leads to interpretative and applicative difficulties that both legal scholarship and jurisprudence have long attempted to remedy.

Taking Article 452-*bis* of the Italian Criminal Code as an example, one encounters expressions such as 'significant and measurable' impairment or deterioration of water or air, or of 'extensive or significant' portions of soil or subsoil.

It is important to recall here the precautionary principle, which is based on a risk-management approach according to which, when it is possible that a given policy or action may cause harm to citizens or to the environment (and, consequently, to human dignity), and scientific consensus on the matter is lacking, such a policy or action should not be pursued (Schröder, 2014).

At first glance, Article 452-*bis* of the Italian Criminal Code appears to embody precisely this rationale: preventing environmental risks from escalating into situations that compromise human dignity through damage to health and the environment. However, the real problem arises in the practical application (or rather, the non-application) of Article 452-*bis*, due to the inherent difficulty in determining the thresholds implied by terms such as 'significant and measurable' and 'extensive and significant'.

The primary consequence is the failure to apply the offence of environmental pollution, thereby allowing the continuation of harmful practices such as high-risk emissions and discharges that endanger human health and the ecosystem. These practices, in turn, lead to living conditions characterized by serious diseases or, in the best cases, minor health issues.

It is precisely at this point that the May 2025 Convention becomes relevant. Chapter IV of the Convention, concerning Substantive Criminal Law, opens with a section devoted to 'Pollution, Products and Substances'. Article 12, arguably one of the provisions that should be at the core of national legislative policies on environmental protection, addresses 'Offences related to unlawful pollution'. It provides that "*Parties shall take the necessary legislative measures to establish as a criminal offence under their domestic law, when committed unlawfully and intentionally, the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants*".

The most relevant part of this provision, in terms of protecting human dignity, lies in the inclusion of conduct that is likely to cause death or serious injury, not only when such outcomes actually occur. This preventive dimension marks a substantial advancement in recognizing the intrinsic link between environmental integrity and the protection of human life and dignity in any country in the world.

On the one hand, it is true that the Convention establishes a general framework that States must then concretely define. On the other hand, it is equally true that the States implementing it must avoid repeating the same mistakes made by Italy. At the national level, it is of little use to create a provision that merely refers to specific threshold value tables, since such thresholds should ideally be reduced over time and changing the law is tough, especially when it comes to private interests. Moreover, situations may arise in which the regulation is no longer adequate to current production standards.

From this perspective, one of the most promising approaches - also in terms of ensuring respect for human dignity - is to develop legislation grounded in a strong preventive logic. This would help limit damage to the ecosystem and prevent interpretative issues that may arise when dealing with vague or unclear legal provisions.

The May 2025 Convention explicitly embraces this principle by providing, within its text, for sanctions even in cases where the criminal offence has not yet occurred but there is a possibility that it may occur.

4. Conclusions

The framework provided by the Convention is therefore one that, if effectively implemented by States, could ensure stronger global protection of the ecosystem and, consequently, of human dignity. Certain questions remain, particularly concerning the genuine willingness of States to adhere to the Convention. However, the Convention also provides the necessary instruments to achieve this goal: a global scope, comprehensive regulatory coverage, and provisions aimed at restoration and remediation - fully consistent with the objective of reaffirming human dignity in the lives of individuals who have chosen to live in a given environment. Moreover, the Council of Europe has demonstrated an awareness of the importance of increasing public understanding of environmental issues.

At the same time, doubts inevitably persist, especially regarding the creation of legal

norms that can ensure effective protection, given that legislators differ widely in their contexts and legal traditions.

Nevertheless, the May 2025 Convention represents an essential starting point. Further mechanisms to facilitate broader ratification must be developed in the coming months to ensure the protection of the ecosystem and, ultimately, the safeguarding of human dignity.

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GENDER DISCRIMINATION AND INTERNATIONAL CRIMINAL LAW: THE ROLE OF THE ICC IN ADVANCING WOMEN'S DIGNITY

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Abstract: *Within the framework of international criminal law, the International Criminal Court (ICC) plays a pivotal role in tackling gender-based crimes and advancing women's dignity. This paper critically examines the ICC's increasing efforts to combat sexual, reproductive, and other forms of gender-based violence, focusing particularly on the Office of the Prosecutor's 2023 Policy on Gender-Based Crimes and related ICC case law.*

Key words: *gender-based violence, ICC, international criminal law, sex-based crimes, women's dignity*

1. Introduction: Gender Discrimination and Gender-Based Crimes in the Rome Statute

This paper critically examines the expanding efforts of the International Criminal Court (ICC) to combat sexual, reproductive, and other forms of gender-based violence, focusing particularly on the Office of the Prosecutor's (OTP) 2023 *Policy on Gender-Based Crimes* (Section 2) and related ICC case law (Section 3). It concludes with reflections on the ICC's pivotal role in protecting women's rights and advancing their human dignity through international criminal law (Section 4).

Against the backdrop of the increasing significance of investigations and prosecutions of sexual and gender-based violence in international criminal law, this paper aims to clarify the most appropriate legal framework for holding those responsible for these grave crimes to account. Given the diverse forms these offences take and their pervasive nature across different contexts, most crimes within the ICC's jurisdiction may potentially involve gender-based elements.

Gender discrimination and gender-based crimes (GBC) are prosecutable offences under the ICC Statute (the Rome Statute). Article 7(1)(h) classifies "persecution against any identifiable group or collectivity on […] gender […] grounds […] in connection with […] any crime within the jurisdiction of the Court" as a crime against humanity when committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack". Article 7(3) of the Rome Statute defines gender narrowly as "the two sexes, male and female, within the context of society", and

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clarifies that "the term 'gender' does not indicate any meaning different from the above". In addition, rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization are acts amounting to war crimes under Article 8(2)(b)(xxii) of the Rome Statute.While the Rome Statute includes gender-based crimes, it does not define gender-based violence. Instead, this definition is provided in the *Policy on Gender-Based Crimes: Crimes Involving Sexual, Reproductive and Other Gender-Based Violence* adopted by the OTP in 2023, which draws on the 2015 Inter-Agency Standing Committee *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action*. The Policy conceptualises gender-based violence as "any harmful act that is perpetrated based on socially ascribed differences based on gender, typically due to a person's actual or perceived gender, sex, or sexual orientation" (ICC OTP, 2023, para. 27). It further explains that gender-based violence encompasses physically, sexually, or mentally harmful acts, as well as "threats of such actions, coercion, and other deprivations of liberty", whether committed in public or in private. The Policy also recognises gender-based violence as "both a symptom of gender inequity and a tool to reinforce it" (ibid., para. 28).

Importantly, gender-based violence is part of the broader category of gender-based crimes. As the OTP notes, this category also includes "non-sexual attacks on women and girls, and men and boys, because of their gender" (ICC OTP, 2014, p. 3).

Beyond these definitions, the Rome Statute itself sets out several provisions addressing gender-based crimes. Article 42(9) instructs the Prosecutor to "appoint advisers with legal expertise" on matters including, *inter alia*, sexual and gender-based violence, and to take all appropriate measures to ensure the effective investigation and prosecution of such crimes. Article 54(1)(b) reinforces this obligation by requiring that investigations "respect the interests of victims and witnesses", taking into account "the nature of the crime, in particular where it involves sexual violence [or] gender violence". Similarly, Article 68(1) emphasises the protection of victims and witnesses, directing the Court to consider all relevant factors, particularly in cases involving "sexual or gender violence", while ensuring that such measures do not infringe upon the rights of the accused or the impartiality of the trial.

Together, these provisions underscore the ICC's commitment to prosecuting GBC and safeguarding the victims of such offences. They form the normative foundation for the Court's evolving policies and practices in combating gender-based violence, issues that will be examined in greater detail in the next section.

2. The OTP's Policies on Gender-Based Crimes

The ICC's policies on gender-based crimes derive from the relevant provisions of the Rome Statute and from the evolving practice of the Office of the Prosecutor, which recognises that such crimes are among the most serious under the Rome Statute (ICC OTP, 2014, p. 7). The evolution of international criminal law in this area, as evidenced by the partial inclusion of gender-based crimes in the Statutes of the International Criminal Tribunals for the former Yugoslavia (ICTY) (Article 5(g)) and Rwanda (ICTR) (Article 3(g)), culminated in the Rome Statute's provisions, described as the "most advanced

articulation in the history of gender-based violence" (Inder, 2010, p. 7; ICC OTP, 2014, p. 9).

Taking these developments and statutory norms into account, the OTP published its first *Policy Paper on Sexual and Gender-Based Crimes* on 27 June 2014. The primary objective of this document was to affirm the OTP's commitment to "prioritising" the investigation and prosecution of GBC and to ensure the full implementation of the relevant provisions of the ICC's legal framework. The Policy Paper aimed to clarify and guide the investigation and prosecution of GBC, promote best practices, and contribute to the development of international jurisprudence in this area (ICC OTP, 2014, pp. 10-11). It also outlined the OTP's policies concerning cooperation with external organisations, engagement with the public, and the Office's institutional development.

While the 2014 Policy represented a significant step forward in advancing the understanding of GBC within international criminal law (Oosterveld, 2018, p. 456), it was not without limitations. A brief issued by the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) in 2023, submitted in response to the OTP's call for public consultation on a new policy, identified several areas in need of improvement and submitted five suggestions: strengthen the gender analysis framework; differentiate between gender-based crimes and sexual crimes; include people of diverse sexual orientations, gender identities and expressions and sex characteristics, and devise specific measures for addressing male experiences; develop a survivor-centred approach; formulate an implementation plan and of a monitoring framework with targets.

Nearly a decade later, the 2014 Policy Paper was comprehensively revised with the publication of the aforementioned 2023 *Policy on Gender-Based Crimes*. The updated Policy reflects the ICC's evolving approach to gender-based crimes (Grey, 2025, p. 388) and the feedback received during the public consultation process (UN Women, 2023).

The new Policy builds on the 2014 Policy and is grounded in the aforementioned Article 54 of the Rome Statute, which emphasises the Prosecutor's duty to pay particular attention to crimes involving sexual and gender-based violence. It therefore reaffirms that combating these crimes remains a strategic priority for the OTP. The 2023 Policy's objectives include: confirming the Prosecutor's commitment to investigating and prosecuting gender-based crimes; clarifying key concepts and guiding principles; integrating a "survivor-centred and trauma-informed" approach into all interactions with victims; interpreting the Rome Statute, the ICC *Elements of Crimes*, and the ICC *Rules of Procedure and Evidence* in a manner that ensures effective accountability; contributing to the ongoing development of international jurisprudence and best practice (ICC OTP, 2023, paras. 5(i-v)).

To operationalise these objectives, the 2023 Policy sets out ten guiding principles: a survivor-centred approach; a trauma-informed approach; intersectionality; gender competence; due diligence; addressing myths and stereotypes; contextualising gender-based crimes; full and faithful characterisation; inclusion and relationships; implementation, monitoring, and evaluation (ibid., paras. 70-92). It also sets out specific actions and methods to be followed at every stage of ICC proceedings, from preliminary examinations to reparations (ibid., paras. 93-144).

Like the provisions of the Rome Statute itself, the OTP's policy papers emphasise the challenges involved in investigating and prosecuting gender-based crimes while maintaining a focus on protecting and dignifying victims.

Having examined the statutory framework and the OTP's policy development, the next section critically assesses the implementation of the ICC's case law on GBC in practice.

3. Gender Justice in ICC Case Law

The following analysis discusses several influential ICC cases addressing gender-based crimes: *Prosecutor v. Dominic Ongwen*, *Prosecutor v. Joseph Kony* (concerning the Situation in Uganda), *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (relating to the Situation in the Republic of Mali), *Prosecutor v. Haibatullah Akhundzada* and *Prosecutor v. Abdul Hakim Aqqani* (referring to the Situation in Afghanistan).

3.1. Gender-based crimes in Uganda before the ICC

On 4 February 2021, ICC Trial Chamber IX delivered its judgment in the *Ongwen* case. He was found guilty and sentenced to 25 years' imprisonment for crimes he committed against civilians while he was a member of the Lord's Liberation Army (LRA) in northern Uganda between 2002 and 2005 (ICC, *Ongwen*, Sentence, 2021, p. 138). He was found guilty, *inter alia*, of numerous gender-based crimes, including forced marriage, sexual slavery, and forced pregnancy, both as crimes against humanity and as war crimes (ICC, *Ongwen*, Judgment, 2021, para. 3116).

This case is particularly significant in discussions about GBC, and more specifically, gender-based violence in ICC jurisprudence, as it marked the first time an international court had convicted an individual for the crime of forced pregnancy under Articles 7(1)(g) and 8(2)(vi) of the Rome Statute. The offence was part of the LRA's systematic practice of allocating "wives" to its soldiers through forced marriages (Ibid., para. 216). This landmark judgment represents a notable development in the recognition and prosecution of forced pregnancy as a distinct crime and has been hailed as a milestone in enhancing gender sensitivity within international criminal justice (Kirabira and Jesse, 2021).

Counts of forced pregnancy also appear in the charges against Joseph Kony, leader of the LRA. The case against Kony is noteworthy not only for the gender-based crimes he is accused of, but also because it is the first ICC trial to proceed against a defendant who remains at large. Namely, he has been indicted *in absentia* for several crimes such as rape, forced marriage, sexual slavery, and persecution on the grounds of gender (ICC, *Kony*, 2025, para. 260).

3.2. ICC case law on gender-based persecution in Mali

In the context of the Situation in the Republic of Mali, Al Hassan Ag Abdoul Aziz (an alleged member of Ansar Dine and the *de facto* head of the Islamic police in Timbuktu between April 2012 and January 2013) was charged with, *inter alia*, persecution on gender grounds under Article 7(1)(h), and with rape and sexual slavery under Article

7(1)(g) (ICC, *Al Hassan*, 2018, para. 12). The significance of this case lies in the fact that gender-based persecution was adjudicated as a specific charge at trial for the first time in the ICC's history (Oosterveld and Dotson, 2023), preceding the aforementioned charges against Joseph Kony for the same offence.

Initially, ICC Trial Chamber X considered the imposition of *sharia* law by Ansar Dine and Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM) as the enforcement of behavioural obligations on the population of Timbuktu that were "*per se* discriminatory on religious grounds" (ICC, *Al Hassan*, Judgment, 2024, para. 1562-1565). However, the Chamber later clarified that the interpretation of *sharia* law enforced by these groups constituted a policy that "specifically targeted local women and girls by reason of their gender", thereby depriving them of numerous fundamental rights based on the gender roles imposed on them (ibid*.*, para. 1566).

In its judgment, the Court found Al Hassan guilty of the crime against humanity of persecution on religious grounds under Article 7 (1)(h) of the Rome Statute (ibid*.*, para. 821), but acquitted him of persecution on gender grounds due to the absence of unanimity among the judges, as set out in Judge Tomoko Akane's dissenting opinion (ICC, *Al Hassan*, Separate and Partly Dissenting Opinion of Judge Tomoko Akane, 2024, para. 95).

The acquittal drew considerable criticism, with some describing it as evidence of the "long-entrenched patriarchal biases endemic to international criminal law", and as minimising the disproportionate harm suffered by women and girls (O'Brien and Maloney, 2024). On 18 September 2024, the OTP lodged an appeal against the judgment in the *Al Hassan* case, disputing, *inter alia*, the acquittals on charges of rape, sexual slavery, and gender-based persecution. The OTP argued that these crimes were central to its case theory, noting that a majority of the Trial Chamber had concluded that Al Hassan had participated "with intent and knowledge" in these offences (ICC, *Al Hassan*, Prosecution's Appeal against Judgment, 2024, para 2-5), and therefore requested convictions for sexual slavery, rape, and persecution on gender grounds (ibid., para. 17).

However, on 17 December 2024, both the Prosecution and the Defence, which had also appealed the verdict, filed "their respective notices of discontinuance of the appeals against the Conviction Decision" (ICC, *Al Hassan*, Notices of discontinuance of the Appeals, 2024, para. 5). In discontinuing its appeal, the Prosecution noted that "in withdrawing his appeal, Mr Al Hassan has asked for forgiveness from all those he harmed and from all the victims of Timbuktu […]. Mr Al Hassan also stated that he firmly opposes any forms of extremism, especially those affecting women and girls, because they fuel hatred and division, and undermine the values of justice and humanity" (Khan, 2024). Some commentators viewed this decision as implying that an apology and withdrawal of an appeal could effectively terminate pending proceedings (O'Brien and Maloney, 2025; Grey, 2025, p. 392), and as inconsistent with the OTP's stated commitment to pursuing accountability for GBC. Others characterised the discontinuance as a missed opportunity, arguing that the Prosecutor's appeal had raised hopes for a more assertive stance on gender-based crimes, which were ultimately "shattered" (O'Brien, Maloney and Oosterveld, 2024).

3.3. The ICC and gender Apartheid in Afghanistan

Afghanistan has been a State Party to the Rome Statute since 2003 (Bogaert, 2022), providing a critical context for examining GBC.

The Situation in Afghanistan before the ICC is particularly significant as it involves the investigation of a *de facto* government policy enacted outside an armed conflict, and marks the first instance in which ICC arrest warrants have been requested solely for crimes under Article 7(1)(h) of the Rome Statute.

In this Situation, the ICC Prosecutor filed applications for arrest warrants against Haibatullah Akhundzada, the Supreme Leader of the Taliban, and Abdul Hakim Haqqani, the Taliban's Chief Justice, for their criminal responsibility in the persecution of women by the *de facto* Afghan government. These acts have been classified as crimes against humanity under Article 7(1)(h) of the Rome Statute (Khan, 2025). On 8 July 2025, the ICC's Pre-Trial Chamber II issued the requested arrest warrants, which remain under seal at the time of writing.

Although the current Taliban regime is not widely recognised internationally (Hasar, 2024), it exercises full control over Afghanistan and enforces its interpretation of Sharia as the *de facto* national authority (ICC, *Akhundzada*, 2025, para. 46). Both accused individuals hold top government positions, with Haqqani described as having "ultimate authority over the judiciary in Afghanistan" (ICC, *Haqqan*, 2025, para. 166). The lack of realistic national proceedings against the accused has been a key factor in the issuance of ICC warrants (ICC, *Akhundzada*, 2025, para. 164; ICC, *Haqqan*, 2025, para. 165).

Specifically, the accused are charged with persecuting girls, women, and individuals who fail to comply with Taliban policies concerning gender, gender identity, or expression. These alleged crimes are believed to have been committed since the Taliban regained power on 15 August 2021. During their previous rule from 1996 to 2001, the Taliban imposed severe restrictions on women's freedom of movement, expression, assembly, association, education, and employment (Telesetsky, 1998; Bogaert, 2022, pp. 12-26; ICC, *Akhundzada*, 2025, para. 32).

The United Nations Human Rights Council has described the scale and severity of these measures as "gender persecution and an institutionalized framework of gender apartheid" (UNGA HRC, 2023, p. 97). The large number of individuals affected is cited as a relevant factor in meeting the gravity threshold under Article 17(1)(d) of the Statute for the admissibility of the cases against Akhundzada and Haqqani (ICC, *Akhundzada*, 2025, para. 166; ICC, *Haqqan*, 2025, para. 167).

4. Conclusions

Both the ICC's Statute and the OTP's strategies and policies provide an adequate normative framework for investigating and prosecuting gender-based crimes before the Court. However, an examination of the case law shows that the ICC is still in the early stages of developing its practice in this area. Persistent challenges remain, particularly with regard to the Court's reliance on State cooperation to execute arrest warrants, the continued impunity of accused individuals who are still at large, and the difficulty of

achieving consistent judicial interpretations and unanimous verdicts.

In conclusion, any shortcomings in the current normative framework can be mitigated through the Court's progressive interpretation of its mandate in its decisions and judgments. Strengthened State cooperation is also essential to ensure the apprehension of suspects and the effective prosecution of gender-based crimes, thereby reinforcing the ICC's vital role in protecting women's rights and advancing their dignity through international criminal law.

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THE CRIMINAL LEGAL RELATIONSHIP – A FUNDAMENTAL CONCEPT IN SAFEGUARDING HUMAN DIGNITY

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Abstract: *The criminal legal relationship is a construct developed within criminal law doctrine, rooted in the philosophical concept of the social contract. It is generally acknowledged that a "social contract" exists between the state and individuals, establishing reciprocal rights and obligations. Accordingly, a criminal legal relationship emerges upon the entry into force of a legal norm that criminalizes a particular act and becomes operational when an individual commits the offense defined by that norm.*

Key words: *criminal legal relationship, social contract, criminal offense, punishment*

1. Introduction

Transition from the will of the gods or God to the social contract took place after many centuries, when human society realised that the Kingdom of God "is not of this world" (Gospel of John, Chapter 18, verse 36) and that people must organise their social life according to the principles of equality, fairness and the common good for all members of society. For many centuries, it was believed that social hierarchies were ordained by God and could not be changed, and it was considered normal for different rules (including criminal law) to apply to members of society depending on their social class.

Over time, human experience accumulated over millennia has shown that justice, fairness and equity are necessary to ensure lasting peace both between members of the same community and between different tribes or states. For religious people, justice is one of the divine attributes and, at the same time, one of God's desires in the organisation of society. Thus, laws began to be drafted that took into account this desire for fairness, considering that it is above the laws and more important than the text drafted by a temporary legislator.

Justice/Fairness, in order to be effective, needs Truth; only if the facts of the case are accurately established can we speak of effective justice, because a just law applied to an unreal situation cannot lead to justice.

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The judicial system, as the institution responsible for administering justice, cannot function without guarantees of the adoption of just laws and the independence and impartiality of judges. However, these are part of a democratic system and it is difficult to conceive of their implementation in a system that is not based on the principles of the rule of law.

There are other moral values that contribute to good coexistence in a society (such as compassion, diligence, etc.), but none of them have become an absolute necessity, as justice has. This is probably because they require a moral standard that is too high for most people, and a society can survive without them, but it could not do so without justice.

According to Aristotle (Nicomachean Ethics), justice necessarily implies a *relationship* between two or more people and cannot be conceived where there is only one person. Moreover, such a reality in which there is only one person could not even be conceived, since, from the dawn of known history, man has been a social being (zoon politicon). The relationship between man and God, which is possible even in absolute solitude, is of a different nature, even if the phrase "God's law" is often used. This relationship also presupposes the thought of the person living in solitude (the monk) towards others, through the cultivation of love and prayer for them. For this reason, the law speaks of social relationships regulated by law, which have given rise to legal relationships.

In Roman law, the concept of legal relationship, as we know it today, was not developed, but something similar was found in the notion of obligation. As stated in doctrine, "The entire structure, not only legal but also social, of the eras that followed the decline of Roman civilisation is indebted to the initial Quirite conception, which saw obligation as a legal relationship, a bond established between creditor and debtor. This bond (vinculum juris) was initially understood in the literal sense of the word, as the power that the creditor had over the debtor, and was later translated symbolically and abstractly into a legal nexus, which gave the creditor rights only over the debtor's property. The medieval rediscovery of Roman law meant that the obligation was no longer viewed primarily from the perspective of the relationship it describes. Facultas agendi, the invention of subjective law, the emphasis on the patrimonialisation of the claim, the breakdown of the obligation relationship into its elements (passive and active), were the major gains brought by Western canon law to the theory of obligation. This theory was now interested in the distinction between natural and positive obligation. The former was conceived in relation to the divine order (jus divinum), aiming at celestial perfection, as opposed to positive obligation, based on the human legal order (Vasilescu, 2024, p. 7). The Romans developed a theory of obligations, which presupposed mutual rights and obligations between parties as a result of legal acts or deeds.

Starting with the modern era, the theory of the social contract developed, according to which citizens ceded part of their natural rights to the state in exchange for the state ensuring their safety. This theory played an important role in the development of the concept of legal relationship, as its central idea is a contractualist vision, which implies the existence of mutual rights and obligations between citizens and the state or between different citizens of the same state.

2. Legal Relationship. Definition. Elements

Of the multitude of relationships between people, legal relationships are limited only to those that are regulated by rules adopted by the legislator. The legal relationship has been defined in doctrine as "that social bond, regulated by legal norms, containing a system of mutual interaction between specific participants, a bond that is susceptible to being defended by means of state coercion" (Popa, 2014, p. 218). In another opinion, "the legal relationship is a social, concrete-historical, volitional relationship, regulated by legal norms, within which the participants manifest themselves as holders of rights and obligations, through the exercise of which the purpose of the legal norm is achieved" (Craiovan, 2015, p. 498). As previously indicated, the essence of the concept of legal relationship is that "it represents the social relationship regulated by legal norms" (Puț, 2024, p. 223).

These definitions show that, at least at the current stage of human society's development, only natural or legal persons can be subjects of a legal relationship. As has been pointed out, "from a legal point of view, objects, things, living beings, nature, the environment, etc. are not subjects of legal relationships but rather existences or phenomena in relation to which people must behave in a certain way and have certain rights or obligations established by legal norms" (Sida, 2004, p. 198).

In the future, we do not know whether society will consider it necessary to include other entities, such as those developed with artificial intelligence, among the subjects of legal relations. It is not unusual for changes to occur in the content of legal relationships in different historical periods, because "Legal relationships are historically determined and influenced social relationships, in the sense that they are formally and substantially marked by the historical period or era in which they were formed" (Puț, 2024, p. 227).

For example, the Soviet Civil Code stipulated that "Civil rights are protected by law, except in cases where their exercise is contrary to their socio-economic purpose". This shows that under the Soviet regime, the legal relationship was not similar to the one we have today in a democratic regime, because it did not contain mutually correlative rights and obligations, but provided for the possibility that certain civil rights might not have correlative obligations on the part of the state if their exercise was considered to be contrary to the socio-economic purpose as defined in a communist regime.

Under the Nazi dictatorship, attempts were made to avoid the notion of subjective rights (of the individual), because Nazi legal theory denied the very notion of subjective rights and even that of the subject of rights, replacing them with that of "position-as-member-of-the-community". Only this "position" would have had rights, which, strictly speaking, were nothing more than powers exercised to achieve the goals of the national community (Bercea, 2022, p. 144). This idea is the exact opposite of the liberal theory of a just society, which essentially argues that "a basic freedom can only be limited or denied in order to protect one or more basic freedoms and never [...] [only] in the name of the public good or perfectionist values" (Bercea, 2022, p. 145).

The legal relationship exists both when the subjects comply with the obligations imposed on each of them and when one of them violates these obligations. The difference between the two situations is that in the first case we are dealing with a legal

relationship of conformity, while in the second case we are dealing with a legal relationship of conflict. In this regard, legal doctrine has shown that "The meeting of the two wills can take the form of either collaboration, which is what happens in most cases when we discuss legal relationships through which the provision of the legal norm is implemented, or in the form of a confrontation of wills, when the subjects of law do not comply with the prescribed conduct, when we discuss legal relationships through which the sanction of legal norms is implemented" (Puț, 2024, p. 226).

The creation of a legal relationship presupposes the pre-existence of certain premises or conditions: 1) a general-abstract condition represented by the legal norm and 2) a special-concrete condition represented by legal facts (Puț, 2024, p. 227). Although the author cited refers to legal facts, these must be interpreted broadly, including both legal acts and legal facts *stricto sensu,* i.e. those legal facts that are regulated by a norm. Therefore, a legal relationship can only be spoken of in the case of social relationships regulated by a legal norm. Not all social relations between individuals are legal relationships, because not all of them are regulated by a norm. For example, relationships governed only by norms of politeness cannot be considered legal relationships, because they are not governed by any legal norm (e.g., giving priority to enter a door or responding to a greeting).

3. Criminal Law Legal Relationship

The theory of criminal legal relations tends to shift punishment from the realm of revenge to that of the offender's violation of a supposed contract between him and society, so that his punishment would be nothing more than the application of what was agreed in the social contract. In reality, from the dawn of humanity to the modern era, punishment for committing a crime has come as revenge. Crimes generally affected private individuals, and they demanded revenge ("Justice! Tearful eyes beg to see you./ Why do you forget us? Are you no longer alive, fairy?..." - Panait Cerna). Even in the case of crimes against the state (crimes of lèse-majesté) or religion, it was still private individuals who considered themselves harmed and demanded revenge, so as not to be harmed by the weakening of the state or the vengeance of the gods. Of course, the theory of criminal legal relations humanised this essence of punishment and made it more morally acceptable, because it would have been too brutal to reduce the essence of punishment to simple revenge.

In addition, a distinction must also be made between Western civilisations, which emphasise the individual and the need for remorse for reprehensible acts (followed by reparations on the part of the individual), and countries that are part of Eastern civilisation, which focus on the community and the shame that the accusation of committing a crime causes them in front of others (especially when it is committed against a member of the same community). It is not difficult to understand why the theory of criminal legal relations has taken root more easily in Western countries and less easily in countries that have long been under the influence of Eastern civilisation, which Romania was part of for a long time.

Unlike the civil legal relationship, which involves two or more private individuals (natural or legal persons), the criminal legal relationship involves a private individual (natural or legal person) and the state. The state, through the legislature, decides which acts harm society as a whole and criminalises them. Thus, if X steals property from Y, this is not a private matter concerning only the two of them, but rather one that concerns society itself (Currier and Eimermann, 2013, p. 53).

However, civil legal relationships are not exclusively private either, but also require recognition by third parties, i.e. they are opposable *erga omnes*. The valid transfer of a property right from one person to another is recognised by society as a whole and is opposable to others, even if it is in principle a private act between the two parties.

In these circumstances, it must be clarified how the criminal legal relationship differs from the private law legal relationship.

We talk about the legal relationship in criminal law in connection with the commission of crimes, in which case a legal relationship of conflict arises between the person who committed the crime and the state. According to this legal relationship of conflict, the state has the right (or rather the obligation) to hold the perpetrator criminally liable and to impose a punishment on them, and the latter has the obligation to submit to this punishment. An interesting view of punishment can be found in the philosopher Hegel, who argues that punishment is “a true right” (Gubici, 2025, p. 93) of the offender. To reach this paradoxical conclusion, Hegel shows that the offender is a free person who accepts the consequences of his actions and, implicitly, the application of a punishment. For Hegel, through punishment, society respects the offender as a moral subject, does not treat him as an animal to be trained or a mere natural cause, thus recognising his “right” to punishment.

Criminal liability is a legal relationship of coercion, arising as a result of the commission of a crime, a relationship established between the state and the offender, the content of which is formed by the state's right to hold the offender accountable, as well as the offender's obligation to answer for his or her actions and to submit to the sanction applied (Popa et al. 2023, p. 246).

The injured party is not a party to the criminal legal relationship, which involves the state (through the state) and the defendant. However, the injured party has been given the opportunity to support the prosecution in the criminal proceedings, arguing that the purpose of its activity is, first and foremost, to obtain recognition of the defendant's guilt. In the case of offences prosecuted on the basis of a prior complaint, the injured party has an even more important role, being able to decide to terminate the criminal proceedings by withdrawing the prior complaint. This does not mean that they are a party to the criminal legal relationship, but only that the state gives them the possibility to decide on the criminal liability of the defendant, for reasons of criminal policy (such as, for example, the existence of close relations between the victim and the perpetrator or the injured party's desire not to be 'revictimised' by participating in criminal proceedings).

The criminal legal relationship is a fiction, but, as has been stated, “Nothing is 'real' in law and in his life. He knows only a vast interweaving, tending towards infinity, of symbols, metaphysical and hermeneutical, more or less codified, for whose decryption schools, doctrines, and philosophical works have been created, whether sporadic,

ephemeral, or with a vocation for universality and equity, such as to attract their perpetuation, or the illusion of permanence" (Bercea, 2022, p. 23).

The CCR's decision on the statute of limitations for criminal liability led to the removal of criminal liability for a large number of defendants, who at the time of the offence did not even dream of such a "loophole", because the cases of interruption of criminal liability were very clearly regulated, and in their case these cases were applicable. It is possible that the judges wanted to remove this inequity and order convictions for acts that clearly constituted offences, some of them quite serious. The defendants invoked with great conviction the application of the more favourable criminal law, and the question arises as to what could be the basis for their conviction that the state has no right to hold them accountable. The answer is still the same, referring to an alleged criminal legal relationship between the offender and the state, according to which the state has no right to hold an offender criminally liable except within the limits conferred upon it by law. However unfair the law may be, the criminal legal relationship obliges the state to hold the offender criminally liable and to apply the punishment strictly within the limits provided for in this "contractual relationship" between the state and the offender, i.e. within the limits of the law.

The situation is similar to that of judges in Romania who retire at an age considered by public opinion to be too young, who would meet the legal conditions for retirement, but whose decrees the President of Romania refuses to sign because he considers it unfair for them to retire at such a young age. In such cases, the interests of judges, resulting from the legal relationship under labour law, to exercise their rights guaranteed by this relationship must also be taken into account.

4. The legal Relationship in the Case Law of the Constitutional Court of Romania

There have been several decisions of the Constitutional Court of Romania in which the concept of legal relationship has been invoked. In this regard, in a decision related to the principle of legal certainty, the constitutional court held that «although the principle of stability/security of legal relations is not expressly enshrined in the Romanian Constitution, this principle can be inferred both from the provisions of Article 1(3) thereof, according to which Romania is a democratic and social state governed by the rule of law, and from the preamble to the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights in its case law. In relation to this principle, the Strasbourg court held that "one of the fundamental elements of the rule of law is the principle of legal certainty" (Judgment of 6 June 2005, delivered in the case of Androne v. Romania, Judgment of 7 October 2009, delivered in the case of Stanca Popescu v. Romania). The European Court has also ruled that "once the State has adopted a solution, it must be implemented with reasonable clarity and consistency in order to avoid, as far as possible, legal uncertainty and uncertainty for the subjects of law affected by the measures implementing that solution" (Judgment of 1 December 2005, delivered in the case of Păduraru v. Romania, Judgment of 6 December 2007, delivered in the case of Beian v. Romania). The Constitutional Court, through its case law, as well as the European Court of Human

Rights, in its established case law (Judgment of 5 January 2000, delivered in the case of Beyeler v. Italy, Judgment of 23 November 2000, delivered in the case of the Former King of Greece and Others v. Greece, and the judgment of 8 July 2008, delivered in the case of Fener Rum Patrikligi v. Turkey), have ruled that the principle of legality presupposes the existence of domestic legal rules that are sufficiently accessible, precise and predictable in their application, leading to the lex certa character of the rule (see, for example, Decision No. 189 of 2 March 2006, published in the Official Gazette of Romania, Part I, No. 307 of 5 April 2006, or Decision No. 26 of 18 January 2012, published in the Official Gazette of Romania, Part I, No. 116 of 15 February 2012). In the same vein, the European Court of Human Rights has ruled that the law must indeed be accessible to the litigant and predictable in its effects. In order for the law to satisfy the requirement of predictability, it must specify with sufficient clarity the scope and methods of exercising the discretion of the authorities in the field in question, taking into account the legitimate aim pursued, in order to provide the individual with adequate protection against arbitrariness (see also Decision No. 900 of 15 December 2020, published in the Official Gazette of Romania, Part I, No. 1274 of 22 December 2020, paragraph 88).» (CCR, Decision No. 49/2025, Published in The Official Journal of Romania, Part I, no. 237 from 18 March 2025)

The Constitutional Court of Romania accepts the existence of legal relationships even in the sphere of public international law between the signatory states of international conventions. In this regard, the constitutional court states the following in a decision: "63. The Court notes that the concept of “transfer of authority” is not new in national legislation, since Law No. 291/2007 - the general regulatory framework in force concerning the conditions under which foreign armed forces may enter, station, conduct operations or transit through the territory of Romania provides, in Article 8(5), that “the structures of the Ministry of National Defence may take command of and order missions for foreign armed forces stationed on Romanian territory, under the conditions set out in Articles 4 and 5, within the limits established by the transfer of authority and the agreements concluded by the Ministry of National Defence with the authorised representatives of the sending party”. Technical agreements are defined in Article 2(h) of the same legislative act as bilateral or multilateral documents which, without creating or modifying legal relations under public international law, establish the specific conditions under which foreign armed forces enter, station, pre-position military products, equipment and materials, conduct operations or transit through the territory of Romania, the procedure for their conclusion being approved by Government decision, in accordance with Article 8(2) of the same legislative act. Moreover, the “transfer of authority” is also regulated in Article 11 of Law No. 121/2011 on the participation of the armed forces in missions and operations outside the territory of the Romanian state. (CCR, Decision No. 157/2025, Published in The Official Journal of Romania, Part I, no. 458 from 16 May 2025)

In another decision, the Constitutional Court of Romania even took up the distinction between the criminal legal relationship of conformity and the criminal legal relationship of conflict, mentioning the following relevant aspects: «In this context, the Court notes that, by Decision No. 297 of 26 April 2018, published in the Official Gazette of Romania,

Part I, No. 518 of 25 June 2018, it found that criminal liability is a form of legal liability incurred as a result of a violation of a provision of criminal law, which gives rise to a legal relationship of coercion, arising as a result of the commission of the offence, a relationship between the state, on the one hand, and the person who commits the offence, on the other. The content of the legal relationship of coercion consists of the state's right to hold the person who committed the offence accountable by applying the appropriate penalty provided for by criminal law and the obligation of the person concerned to serve the penalty imposed. The Court also noted that, among the principles governing criminal liability, the principle of legality of criminalisation and punishment, provided for in Article 23(12) of the Constitution and Article 1 of the Criminal Code, according to which the acts constituting offences and the penalties applicable in the event of their commission are provided for by law, is relevant from the perspective of the present analysis of the Constitution and Article 1 of the Criminal Code, according to which the acts constituting offences and the penalties applicable in the event of their commission are provided for by criminal law. The same principle is also indirectly found in Article 15(2) of the Criminal Code, according to which the offence is the only basis for criminal liability. The principle of legality of criminal liability is complemented by the principle of its personal nature, according to which criminal liability can only be incurred by the person who committed the offence and those who participated in its commission. Based on its previous case law (Decision No. 682 of 30 September 2020, published in the Official Gazette of Romania, Part I, No. 971 of 21 October 2020, Decision No. 297 of 26 April 2018, published in the Official Gazette of Romania, Part I, No. 518 of 25 June 2018), the Court finds that the regulation of criminal liability and the system of penalties consisting of principal or additional penalties are matters relating to the criminal policy of the state. It is the exclusive prerogative of the legislator to determine the penalties applicable in the case of the commission of offences in relation to the degree of social danger of the act/perpetrator, the severity of the penalty provided for by law for the offence committed, and in relation to the severity of the penalty imposed. In this regard, an important role is played by the judicial authorities, which, in the process of applying the law, will impose complementary penalties for periods appropriate to the achievement of their purpose and depending on the seriousness of the offence committed, by means of final decisions, resulting from a fair trial, with respect for all the procedural rights and guarantees of criminal justice. Therefore, without ruling out the possibility of exercising constitutional review over any legislative solution in criminal matters, the Court held that it did not have the competence to intervene in the field of legislation and criminal policy of the state, any contrary attitude constituting an interference in the competence of this constitutional authority (see Decision No. 629 of 4 November 2014, published in the Official Gazette of Romania, Part I, No. 932 of 21 December 2014, paragraph 26, and Decision No. 682 of 30 September 2020, cited above, paragraph 29). Thus, the Court recognised that, in this area, the legislature enjoys a fairly wide margin of appreciation, given that it is in a position to assess, on the basis of a number of criteria, the need for a particular criminal policy.» (CCR, Decision No. 355/2025, published in in The Official Journal of Romania, Part I, no. 694 from 24 July 2025)

5. The Legal Relationship in the Case Law of the European Courts

The concept of "legal relationship" is also found in the case law of the European Court of Human Rights, which has held, for example, that «In 2013, the tax authority carried out a tax inspection of the applicant for the 2008-2010 tax years with a view to verifying his income tax liabilities. By a decision of 3 July 2013, the tax authority found that the applicant had a debt of HUF 290,738,542 (approximately EUR 800,000), which was classified as tax arrears. It was established that between 5 January and 29 December 2010, the claimant had withdrawn HUF 715,025,000 (approximately EUR 2,018,000) from the bank account of a limited liability company of which he had previously been the founder and managing director, but with which he no longer had any legal relationship at the time of the events. There was no trace of these financial transactions in the company's tax records, and the claimant had not paid income tax on the amount in question. The tax authority fined the claimant HUF 219,948,110 (approximately EUR 603,000) and ordered him to pay an additional HUF 67,531,880 (approximately EUR 185,000) in interest. On appeal, the higher tax authority found that the claimant's tax arrears amounted to HUF 227,985,686 (approximately EUR 625,000) and reduced the amount of the fine to HUF 170,883,486 (approximately EUR 490,000) and the interest to HUF 52,999,572 (approximately EUR 145,000).» (CCR, Decision No. 355/2025, published in in The Official Journal of Romania, Part I, no. 694 from 24 July 2025)

Although other aspects of the theory of legal relationship are not detailed in this judgment, it is relevant that the European court specialising in the protection of human rights accepts the existence of this concept and applies it in a case where the existence of a legal relationship between the applicant and the company that had tax debts is relevant.

The concept of legal relationship is also mentioned in the case law of the CJEU in connection with the principle of stability of legal relationships, which has held, for example, that However, it is important to recall the importance of the principle of res judicata in both the legal order of the Union and in national legal orders. Thus, in order to ensure both the stability of the law and legal relationships and the proper administration of justice, it is necessary that judgments which have become final after the exhaustion of the available remedies or after the expiry of the time limits for exercising those remedies can no longer be challenged.» [CJEU, JUDGMENT OF THE COURT (Fourth Chamber) of 11 September 2019, Case C-676/17, Retrieved from https://curia.europa.eu/juris/document/document.jsf?text=&docid=217626&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=11428470]

6. Conclusions

The concept of legal relationship in criminal matters is not purely theoretical, but also has practical relevance. For this reason, it is not without practical interest to explore this subject in depth, as it may be relevant to the limits of criminal liability of persons who have committed offences. It is clear that any person who has committed a crime is obliged to be held criminally liable, but they also have the right to be punished strictly in

accordance with the law for the crime committed. In the case of offences committed in ideal concurrence, the question of a violation of the criminal legal relationship could arise, because the offender is held criminally liable for two or more offences, even though he or she committed only one act or omission. In reality, this is not a violation of the criminal legal relationship of conflict, but rather criminal liability for harming several social values protected by criminal law through the same act. As stated in doctrine, if the act, together with all its consequences, is covered by a single rule, we are dealing with a concurrence of qualifications, and only the special rule is applicable. And if none of the applicable rules fully covers the facts, each of these texts must be applied in order to punish the act committed in all its aspects (Streteanu and Niţu, 2018, p. 102).

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TOWARDS HARMONIZED HATE CRIME LAWS: BRIDGING LEGAL GAPS FOR HUMAN DIGNITY AND INCLUSION IN THE EU AND INTERNATIONAL SYSTEMS

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Abstract: *This paper analyzes the inconsistent legal responses within the EU and international systems to hate crimes against Muslims, especially incidents involving desecration or insults toward the Holy Quran. It highlights the growing tension between freedom of religion, freedom of expression, and protections against hate speech—three rights often treated separately rather than in an interconnected manner. Due to the absence of harmonized legal standards, significant protection gaps persist, disproportionately affecting Muslim communities. By comparing national laws, EU instruments, ECtHR case law, and UN standards, the paper identifies approaches for better balancing these rights. It ultimately calls for clearer and more coherent legal frameworks that safeguard both the dignity of religious minorities and fundamental freedoms.*

Key words: *Hate crime laws, Freedom of religion, Freedom of expression, Human dignity, Holy Quran*

1. Introduction

In recent years, Europe has witnessed a concerning increase in public acts of desecration and insult directed at the Holy Quran—often framed as political expression, but widely perceived by Muslim communities as deliberate provocations against their faith. These incidents, including Quran burnings and staged public insults, have sparked intense public debates and diplomatic tensions, especially in countries such as Sweden, Denmark, and the Netherlands. More broadly, they reflect a growing pattern of anti-Muslim hate that intersects with broader trends of xenophobia, far-right populism, and contested interpretations of fundamental rights (Nissen and Lundstedt, 2024).

The legal and societal challenge posed by such acts lies in the complex and often uneasy balancing of three fundamental human rights: the right to freedom of expression, the right to freedom of religion, and the protection of minority groups from hate speech and

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hate-motivated violence. While international and European human rights instruments protect all three, legal responses to hate crimes—especially when symbolic speech or expression is involved—often reveal fragmented approaches and inconsistent jurisprudence. This has created normative ambiguity and protection gaps, particularly for Muslims in the European Union (EU) whose religious identity is increasingly under symbolic attack. This paper seeks to examine how the EU and international legal systems currently respond to hate crimes that target Muslim communities and religious symbols, with a focus on the Quran. It raises two central research questions:

(1) How can EU and international legal frameworks more effectively and coherently address hate crimes that target Muslims, especially when they take the form of symbolic acts such as desecration of religious texts?

(2) Can legal harmonization across national, regional, and international levels promote both human dignity and inclusion while maintaining respect for freedom of expression?

To address these questions, the paper adopts a doctrinal and comparative approach. It analyzes relevant international and EU legal instruments, human rights jurisprudence (especially from the European Court of Human Rights (ECtHR)), and selected national case studies involving recent Quran desecration incidents. Through this analysis, the paper explores whether and how hate crime law can be better harmonized to serve the values of equality, inclusion, and human dignity without eroding core freedoms. The structure of the paper proceeds as follows: Section 2 outlines the conceptual and legal framework; Section 3 examines the tension between the three key rights; Section 4 explores legal gaps; Section 5 presents a case study on Quran desecration incidents in the EU; Section 6 proposes harmonization strategies; and Section 7 concludes with recommendations.

2. Conceptual and Legal Framework

Understanding the legal complexity surrounding acts of Quran desecration and broader anti-Muslim hate requires a clear conceptual framework (Bleich, 2011). This section clarifies the meaning of hate crime and hate speech under international and regional law and outlines the key human rights instruments that govern freedom of religion, expression, and minority protection. These normative frameworks form the foundation for assessing how legal systems can or should respond to symbolic attacks on religious communities.

Defining Hate Crime and Hate Speech

Hate crime refers to criminal acts motivated, wholly or partly, by bias against groups defined by characteristics such as religion, ethnicity, race, or sexual orientation (OSCE/ODIHR, 2009). The OSCE defines hate crimes as offenses under criminal law motivated by bias, and the EU's Framework Decision 2008/913/JHA similarly requires Member States to criminalize conduct inciting violence or hatred based on race, religion, or ethnic origin(Council of the European Union, 2008).

Hate speech encompasses expressions—verbal, symbolic, or otherwise—that incite hatred, discrimination, or violence against identity-based groups. The UN Rabat Plan of Action (2012) provides a six-factor test—context, speaker, intent, content and form,

extent of dissemination, and likelihood of harm—to distinguish hate speech from protected expression and the UN Strategy on Hate Speech (2019) emphasizes countering hate speech while safeguarding freedom of opinion and expression (UN Human Rights Council, 2013; United Nations, 2019).

It is crucial to differentiate hate crime from hate speech and from protected speech. Not all offensive expression constitutes hate speech, and not all hate speech qualifies as a criminal act. The ECtHR protects ideas that "offend, shock or disturb" (ECtHR, 1976) but allows restrictions on incitement or speech that undermines others' rights (ECtHR, 2006; ECtHR, 2009). In cases of Quran desecration, determining whether an act is protected political expression, prosecutable incitement, or a hate crime depends on the legal system's interpretation and balancing of competing rights.

Relevant Human Rights Standards

The analysis focuses on three core rights—freedom of religion, freedom of expression, and minority protection—which are recognized in international and regional human rights law and can sometimes align but also generate legal tensions.

Freedom of Religion

The right to freedom of thought, conscience, and religion is protected under Article 18 ICCPR and Article 9 ECHR (United Nations, 1966; Council of Europe, 1950), covering both absolute internal beliefs and externally manifested practices, which may be limited only when lawful and necessary in a democratic society. The ECtHR recognizes that this right includes individual and collective religious expression, including protection of religious symbols and sacred texts (ECtHR, 1994; ECtHR, 2005), but also emphasizes that pluralism requires tolerance of critical or provocative speech. This creates tension in cases of Quran desecration, raising questions about the extent of legal protection for believers offended by symbolic attacks that do not directly impede worship.

Freedom of Expression

Freedom of expression, protected under Article 19 ICCPR and Article 10 ECHR, guarantees the right to hold opinions and communicate ideas but is not absolute. Both treaties allow lawful, necessary, and proportionate restrictions for legitimate aims, and Article 20(2) ICCPR requires States to prohibit advocacy of hatred that incites discrimination, hostility, or violence. The ECtHR takes a contextual approach: in Féret v. Belgium (2009), it upheld conviction for leaflets inciting hatred against immigrants, and in Erbakan v. Turkey (2006), it permitted restrictions on expressions promoting religious intolerance or threatening public order. These cases show that while political debate and criticism of religion are protected, speech inciting hatred or violence is not. However, the boundary remains contested in symbolic acts like flag burning or Quran desecration, where intent and impact are harder to assess.

Protection of Minorities

Protecting minorities from discrimination and hate is a fundamental principle of international human rights law. The 1992 UN Declaration obliges States to safeguard

the cultural, religious, and linguistic identity of minorities and ensure nondiscriminatory enjoyment of their rights (United Nations, 1992). The EU Charter of Fundamental Rights similarly prohibits discrimination, including on religious grounds, and affirms freedom of thought, conscience, and religion (European Union, 2012). EU Member States must also combat racism, xenophobia, and religiously motivated hate speech and crimes under Framework Decision 2008/913/JHA (Council of the European Union, 2008). Hate crimes against religious minorities, such as Quran burnings, threaten community belonging and social cohesion and may function as symbolic hate crimes even without physical violence.

3. The Interplay between the three Rights

Although freedom of religion, freedom of expression, and minority protection are established under international and European human rights law, their interaction becomes complex in cases of symbolic attacks on religious objects, such as Quran desecration. While such acts may be defended as political expression, they are experienced by Muslim communities as assaults on dignity and belonging, raising concerns about minority protection and democratic tolerance (Waldron, 2012, pp. 105–106). The challenge lies in balancing these rights without privileging one over the others, as hate speech and symbolic attacks can undermine the assurance of equal dignity (Waldron, op. cit.). The ECtHR applies proportionality analysis, considering context, intent, content, and impact (ECtHR, 1976; ECtHR, 1994), but its jurisprudence is inconsistent: restrictions are sometimes upheld to protect religious sensibilities (Otto-Preminger-Institut), while in E.S. v. Austria (ECtHR, 2018) robust debate is protected even when offensive. This inconsistency highlights the need for clearer, harmonized standards.

4. Legal Gaps and Challenges in the Current Framework

Despite the existence of international and European legal standards on hate crime, hate speech, and the balance of key rights, significant protection gaps remain. These gaps leave Muslim and other religious minority communities vulnerable to symbolic and verbal attacks and create uncertainty for courts and policymakers.

This section identifies four main areas of concern: (1) definitional inconsistency, (2) inadequate data collection and enforcement, (3) fragmentation across national legal systems, and (4) the marginalization of dignity-based reasoning in hate crime law.

Definitional Inconsistency

A major challenge in hate crime law is the absence of a consistent definition of hate crime or hate speech across jurisdictions. International instruments offer general principles but no uniform standards, leading EU Member States to adopt divergent approaches. Countries like the United Kingdom and Germany have comprehensive legislation that explicitly protects religion and allows enhanced penalties for religiously motivated crimes, while others—such as France—criminalize incitement to hatred but rarely treat symbolic acts like Quran desecration as hate crimes unless they involve

explicit incitement to violence. These differences have concrete consequences: an act such as Quran burning may be prosecuted as a hate crime in one country but protected as free speech in another, creating uneven protection for victims. The concept of "incitement" remains contested, as courts often require explicit calls to violence, despite broader interpretations such as the Rabat Plan of Action threshold test, which emphasizes intent and the likelihood of harm.

Inadequate Data Collection and Enforcement

A second major gap involves the lack of reliable hate crime data. The FRA has repeatedly reported widespread underreporting across the EU (European Union Agency for Fundamental Rights, 2018), as victims often distrust authorities, fear retaliation, or doubt that reporting will lead to action. Even when incidents are reported, police and prosecutors may fail to record the hate motivation. This data deficit obscures the real extent of anti-Muslim hate, hinders policymaking and resource allocation, weakens accountability, and reinforces feelings of marginalization among affected communities (Carr and Haynes, 2014). Strengthening data collection requires improved law-enforcement training and legal frameworks that explicitly recognize religious bias and mandate systematic recording of hate-motivated offenses.

Fragmentation Across National Legal Systems

The third challenge is the fragmentation of legal responses across EU Member States. While Framework Decision 2008/913/JHA sets minimum standards against racism and xenophobia, it allows significant national discretion, resulting in wide variations in definitions, thresholds, and enforcement. For example, Sweden initially did not prosecute Quran burning but later criminalized "aggravated unlawful threat" with religious motivation, whereas Denmark enacted a law in 2024 explicitly prohibiting improper treatment of objects of religious significance (Straffeloven § 110e, 2024). This lack of harmonization creates confusion, undermines equal protection across the EU, and allows perpetrators to exploit jurisdictions with weaker safeguards, raising concerns about the EU's commitment to non-discrimination.

Marginalization of Dignity-Based Reasoning

A fourth gap in hate crime jurisprudence is the marginalization of dignity-based reasoning. Although human dignity is a foundational value under international and European law, it is often overlooked in cases of hate speech or symbolic attacks, where courts focus on balancing freedom of expression against public order or violence prevention. As Waldron notes, dignity concerns the recognition of equal status in society, and symbolic attacks—such as public Quran burnings—undermine this assurance for religious minorities (Waldron, 2012). Incorporating dignity-based reasoning more robustly would strengthen hate crime law by centering minority experiences and addressing social and psychological harms, while still allowing a nuanced balancing of competing rights.

5. Case Study: Quran Desecration Incidents in the EU

To illustrate the legal gaps and challenges discussed above, this section examines recent incidents of Quran desecration in the EU, with a particular focus on Sweden and Denmark. These cases provide concrete examples of how different legal systems have responded—or failed to respond—to symbolic attacks on Muslim communities.

Sweden: Legal Responses to Quran Burnings

In 2023, Sweden saw several high-profile Quran desecration incidents outside mosques and diplomatic missions, provoking domestic and international debate over free speech and minority protection. Initially, prosecutions were limited due to constitutional protections and the narrow interpretation of "agitation against a national or ethnic group" (hets mot folkgrupp), which focuses on explicit incitement rather than symbolic acts (Stockholms Tingsrätt, 2024). The Salwan Najem case, decided on 3 February 2025 in Stockholm, demonstrates a firmer judicial response: although Najem's stated aim was to criticize Islam, his and another demonstrator's repeated acts expressed clear contempt toward Muslims and exceeded legitimate debate. Acting with intent and without a clearly excusable belief in permissibility, Najem was convicted of hate speech against a group (hets mot folkgrupp) on four occasions (Stockholms tingsrätt, 2025). The Salwan Najem case illustrates Sweden's firmer judicial response to Quran burnings (Al Jazeera, 2025).

These cases highlight the persistent tension between freedom of expression and protection of religious minorities from symbolic violence, exposing gaps in legal frameworks that emphasize explicit incitement while neglecting broader social and psychological harms. Although the Swedish government has proposed tightening hate speech laws, comprehensive reform has not yet been implemented.

Denmark: Legislative Reform and Its Limitations

Denmark's response to Quran desecration has been proactive. In 2024, § 110e of the Criminal Code was enacted to prohibit the "improper treatment" of objects of significant religious importance, including the Quran, when done publicly with intent to insult a religious group (Straffeloven § 110e, 2024). The law emerged after multiple Quran burning incidents in 2023 and aims to protect public order, prevent diplomatic tensions, and safeguard minority dignity. Critics, however, warned it could restrict legitimate criticism of religion.

The law includes key limitations: it applies only to public acts with specific intent, does not restrict critique of religious ideas, and imposes moderate penalties (fines or up to two years imprisonment). Its practical impact remains uncertain, with few prosecutions so far, and it does not resolve broader structural issues like underreporting, data collection, or enforcement challenges in hate crime law.

The Netherlands and Other Member States

Similar incidents have occurred in other EU countries, including the Netherlands, Belgium, and France, each of which has responded differently. The Netherlands, like Sweden, has historically emphasized freedom of expression, and Dutch authorities have

been reluctant to prosecute symbolic acts of desecration unless they involve explicit incitement to violence (NL Times, 2024). Belgium has more robust hate speech laws but has faced challenges in enforcement, particularly in distinguishing between protected political speech and unlawful incitement (European Parliamentary Research Service, 2024). France, meanwhile, has taken a more nuanced approach, balancing its strong tradition of laïcité (secularism) with protections against religious hate speech (European Parliamentary Research Service, 2024). These variations underscore the lack of a coherent, EU-wide approach to hate crimes targeting religious minorities. They also illustrate the need for greater legal harmonization, as discussed in the following section.

6. Towards Harmonization: Strategies for Legal Reform

The previous sections have identified significant gaps and inconsistencies in how EU Member States respond to hate crimes targeting Muslim communities, particularly in cases involving symbolic acts such as Quran desecration. This section proposes four strategies for legal reform aimed at achieving greater harmonization while respecting national legal traditions and fundamental rights: (1) strengthening EU-level standards, (2) clarifying judicial interpretation through ECtHR guidance, (3) improving data collection and enforcement, and (4) embedding dignity-based reasoning in hate crime law.

Strengthening EU-Level Standards

The first step toward harmonization is revising and strengthening EU Framework Decision 2008/913/JHA, which currently sets minimal standards and allows broad national discretion. A revised framework should explicitly recognize symbolic acts of desecration and insult targeting religious communities as potential hate crimes, particularly when intended to incite hatred or undermine minority dignity, while maintaining free expression protections. It should also standardize definitions of key terms such as “hate crime,” “incitement,” and “religious hatred” to reduce legal fragmentation, mandate enhanced penalties reflecting the harm of hate-motivated offenses, and include provisions for cross-border cooperation and mutual recognition of prosecutions to address the transnational nature of hate speech.

Clarifying Judicial Interpretation Through ECtHR Guidance

The second strategy focuses on the ECtHR, which plays a key role in balancing freedom of expression and religious freedom but has produced inconsistent jurisprudence. In Otto-Preminger-Institut v. Austria (1994), the Court upheld restrictions to protect religious sensibilities, whereas in E.S. v. Austria (2018), it emphasized robust debate even if provocative.

To guide national courts, the ECtHR should develop a coherent framework for hate speech cases, particularly symbolic acts, incorporating the six-factor test from the Rabat Plan of Action: context, speaker, intent, content and form, extent of dissemination, and likelihood of harm. The Court should also give greater weight to dignity-based reasoning, considering whether expression undermines the equal status and public assurance of dignity for minorities, while maintaining freedom of expression as a fundamental right.

Improving Data Collection and Enforcement

The third strategy addresses the practical implementation of hate crime law. Even strong legal standards are ineffective without proper enforcement, particularly given chronic underreporting and limited institutional capacity across the EU. The EU should establish minimum standards for hate crime data collection, requiring disaggregation by bias type, tracking of reported and prosecuted cases, and annual publication of statistics, with the FRA given a stronger mandate to monitor compliance and provide technical assistance. Member States should also invest in training for law enforcement, prosecutors, and judges, emphasizing victim-centered approaches. Finally, mechanisms for community engagement and victim support, including partnerships with civil society and Muslim organizations, should be developed and supported through funding and dialogue.

Normative Shift: Inclusion and Dignity at the Core of Hate Crime Law

Beyond technical reforms, a broader normative shift is needed to reorient hate crime law around human dignity, equal protection, and minority inclusion. This involves framing legislation as protective rather than punitive, rejecting false dichotomies between freedom of expression and minority rights, and embedding dignity-based reasoning in laws and judicial interpretation. Such an approach would strengthen the rule of law and reinforce the EU's commitment to pluralism, tolerance, and mutual respect.

7. Conclusion

This paper has shown that EU and international legal responses to hate crimes against Muslims, particularly Quran desecration, are fragmented and inconsistent, creating gaps in protection and legal uncertainty. Tensions between freedom of expression, freedom of religion, and minority protection are often treated in isolation rather than as interconnected rights. The study highlights the need for a harmonized, rights-sensitive legal framework that balances democratic values with the protection of vulnerable groups. Effective reform requires EU-level standardization, clearer judicial guidance, and stronger intercultural dialogue. Ultimately, criminal law can support inclusion and human dignity without stifling legitimate speech when applied proportionally and contextually.

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INVISIBLE VICTIMS: THE ENDURING LEGACY OF ROMA PERSECUTION FROM NUREMBERG TO TODAY

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Abstract: *International criminal law has played a pivotal role in addressing atrocities, yet it has often failed to fully confront systemic discrimination against marginalized groups. The legacy of the Nuremberg Trials - widely recognized as the foundation for modern international justice - offers a striking example. Although the Roma were among those persecuted by the Nazi regime through internment, forced sterilization, and extermination, their suffering was notably absent from the indictments and legal narratives produced by the Tribunal.*

Key words: *Roma, discrimination, Nuremberg Trials, human dignity*

"To deny people their human rights is to challenge their very humanity."
- Nelson Mandela

1. Introduction

The Nuremberg Trials are widely recognized as the cornerstone of modern international criminal law, representing an unprecedented effort to reconcile mass atrocity with legal accountability. They established principles of individual criminal responsibility, crimes against humanity, and the universality of human rights, and became a global reference point for postwar justice (Douglas, 2001; Koskenniemi, 2002). Yet, alongside their historical significance lies a profound paradox: the very universality the Trials claimed to uphold was accompanied by critical exclusions. Among the groups systematically targeted by the Nazi regime, the Roma - subjected to forced sterilization, internment, and systematic extermination - were largely invisible in the legal narratives and indictments presented at Nuremberg (Kenrick and Puxon 2009; Lewy, 2000). Their absence is not merely a historical footnote but a revealing indication of the limits and structural biases of international law.

This paper argues that the Roma's exclusion should be understood not only as a moral failure but also as a failure of legal memory. Human dignity, a principle central to the Nuremberg legal framework, is meaningful only when it is recognized and recorded; when

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certain populations are omitted, their dignity is undermined in both legal and historical terms (Kateb, 2011; Butler, 2004). By exploring human dignity as a form of legal memory, this study examines how Nuremberg selectively constructed narratives of suffering, deciding which victims would be formally acknowledged and preserved in the historical record (Fricker, 2007; Trouillot, 1995). Roma's invisibility exposes the epistemic and structural limitations of law, revealing a persistent tension between aspirational universality and selective recognition.

Furthermore, the implications of Nuremberg's omissions extend beyond historical critique. Situating the Roma genocide within broader discussions of human dignity, collective memory, and contemporary international criminal law highlights the ongoing impact of historical silences on marginalized communities (Fraser, 2008; Moyn, 2010). Through archival analysis, comparative legal scholarship, and theoretical perspectives on memory and recognition, this paper demonstrates that fully realizing human dignity in international law requires a conscious effort to integrate marginalized voices - not merely as an ethical imperative but as a fundamental component of justice itself. In this sense, examining Roma exclusion at Nuremberg offers insights into how contemporary institutions might confront historical silences and create more inclusive frameworks for recognition and accountability (Arendt, 1951; Spivak, 1988)

As a researcher, I am conscious that engaging with histories of suffering requires humility and responsibility. This work is not only an academic inquiry but also a gesture of recognition toward those whose voices were denied by history.

In 2011, the European Commission against Racism and Intolerance (ECRI) at the Council of Europe adopted a General Recommendation to combat anti-Gypsyism and defined anti-Gypsyism as follows: "antigypsyism is a specific form of racism, an ideology based on racial superiority, a form of dehumanization and institutional racism nurtured by historical discrimination, which is expressed, among other things, by violence, hate speech, exploitation, stigmatization and the most blatant types of discrimination"

1.1. Methodological note

This study employs an interdisciplinary and critically reflexive methodology that combines archival research, legal analysis, and theoretical inquiry through the lens of human dignity and memory studies. Archival materials and secondary historical sources on the Nuremberg Trials are examined to trace the mechanisms through which legal recognition was selectively granted or denied, particularly concerning the Roma genocide.

The analysis draws on critical legal theory and philosophical perspectives on recognition, memory, and exclusion to uncover the epistemic structures that rendered Roma suffering invisible within formal legal discourse. In adopting this approach, the research recognizes that law is not merely a neutral system of norms but also a producer of historical memory and moral hierarchies.

Moreover, the methodology is guided by an ethical commitment to inclusivity and recognition: rather than speaking about the Roma experience in abstract terms, it seeks to engage with Roma testimonies, oral histories, and cultural narratives as vital sources of legal memory. This approach acknowledges the limitations inherent in archival silences

while affirming that the recovery of marginalized voices constitutes a form of restorative justice. By combining legal inquiry with personal testimony, it seeks to reveal how remembrance itself becomes a form of justice.

2. Historical Context: Roma and the Nazi Regime

Thomas Acton traces the origins of anti-Gypsyism to the fifteenth century, when the Roma first arrived in large numbers in Western Europe and faced hostility and persecution from local authorities and populations. He shows how anti-Gypsyism has evolved from scientific racism and popular racism into a discourse influenced by political and economic interests, as well as by the lack of recognition and representation of Roma identity and culture. (Acton, 2012)

The Roma, often referred to as Gypsies in historical documents, experienced persecution under the Nazi regime that was both systematic and brutal. This period, known in Roma communities as the *Porajmos* ("the Devouring"), involved internment, forced sterilization, and mass extermination. Estimates suggest that between 220,000 and 500,000 Roma were killed across Nazi-occupied Europe (Kenrick & Puxon, 2009). The Roma were racialized as "asocial" and "inferior," making them targets of state-sponsored violence that sought to erase their communities entirely (Zimmermann, 2015). Concentration and labor camps such as Auschwitz-Birkenau housed the so-called "Gypsy family camp," where thousands of Roma, including women and children, were murdered in a single liquidation operation on August 2, 1944 (Lewy, 2000).

Despite the availability of documentation - police records, sterilization reports, and survivor testimonies - Roma's persecution was rarely highlighted in the Nuremberg indictments. Prosecutors prioritized crimes against Allied nationals and political dissidents, leaving Roma suffering marginalized and peripheral within the emerging legal record (Douglas, 2001; Fraser, 2012, p. 159-182). This omission reflects broader patterns of epistemic exclusion: the Roma were not only victims of horrific crimes but were also denied acknowledgment in the very systems intended to document and prosecute atrocity.

The consequences of this historical invisibility extend beyond the trials themselves. By failing to formally recognize Roma victimhood, Nuremberg shaped a collective legal memory that excluded an entire community from the moral and juridical narrative of justice (Fricker, 2007; Trouillot, 1995). This omission has continued repercussions today, influencing contemporary legal processes, policy-making, and social recognition. Roma communities continue to experience discrimination and marginalization across Europe, often with limited access to legal remedies or reparative measures (European Union Agency for Fundamental Rights (FRA), 2021; (Chang & Rucker-Chang, 2020). Understanding the historical context of their persecution is therefore essential for examining how international law constructs memory, recognition, and human dignity.

Racism ought to be recognized as a violation of human rights on the same grounds that racial discrimination is. The basis for outlawing racial discrimination in international law rests upon the idea that it negates the core human rights of dignity, self-determination, and equality. (The Universal Declaration of Human Rights, 1948)

2.1. Roma testimonies

While legal and historical archives provide crucial documentation of Roma persecution, survivor testimonies offer an indispensable dimension to understanding the human reality that legal frameworks often fail to capture. These voices - frequently marginalized or forgotten - constitute acts of resistance against erasure, restoring the dignity that historical silence has denied.

Roma survivor Ceija Stojka, who was deported as a child to Auschwitz and later to Ravensbrück, recalled: *"We were not considered human beings… even the dogs had more rights than we did"* (Stojka, 2012, p. 14).

Her words reveal not only the brutality of Nazi persecution but also the existential dehumanization that framed Roma identity during the Porajmos. The legal invisibility of such suffering at Nuremberg mirrors this same denial of personhood.

imilarly, Raymond Gurême, a French Roma survivor who escaped from internment and later joined the Resistance, reflected: "*We had no names, no numbers, only the silence of those who did not see us"* (Gurême and Rivoallan, 2011, p. 42). Gurême's testimony underscores the enduring consequences of historical invisibility - both within the camps and in the postwar legal imagination.

Roma testimonies collected by historians such as Zoni Weisz and Adele Radočaj further illustrate how remembrance functions as an assertion of humanity. Weisz, who lost his entire family in the Holocaust, addressed the German Bundestag in 2011: "We were part of the same genocide, but for decades, we were not part of the memory" (Weisz, 2011).

Such reflections exemplify the concept of "restorative dignity" - the idea that recognition through testimony itself constitutes a form of justice. Incorporating these narratives into legal and historical scholarship bridges the divide between juridical memory and lived experience. It also fulfils what Gayatri Spivak (Spivak, 1988, p. 271–313) termed the ethical responsibility to "let the subaltern speak."

In this sense, Roma survivor testimonies insist that justice must not only be rendered through verdicts, but through the ongoing remembrance of every silenced voice.

3. The Nuremberg Framework and the Politics of Recognition

The International Military Tribunal at Nuremberg established three core principles: individual criminal responsibility, crimes against humanity, and the notion that certain acts violated the conscience of humanity. These principles emphasize civilization, morality, and human dignity as central legal values. However, as Koskenniemi notes, this universality was framed within a Western moral and political context, which determined who was legible as a victim in the emerging international legal order. (Koskenniemi, 2002)

Judith Butler's concept of *differential grievability* illuminates this selective recognition: certain lives are acknowledged as deserving of mourning and legal protection, while others are rendered invisible (Butler, 2004). At Nuremberg, Roma lives were not legible within the moral and juridical frameworks employed by the Tribunal. Hannah Arendt's discussion of "the right to have rights" further underscores this issue: the Roma, often stateless and marginalized, lacked the recognition necessary to be fully represented in

postwar legal structures. (Arendt, 1951)

The exclusion of Roma narratives can thus be seen as an *institutionalized silence*, echoing Trouillot's concept of "silencing the past" (Trouillot, 1995). This form of silence is not merely a passive omission; it actively constructs hierarchies of memory and recognition, shaping which experiences are documented and preserved within legal and historical records. Nuremberg's selective memory set a precedent for how international law would value certain victims over others, embedding structural biases into the foundations of global justice.

3.1. Human dignity as legal memory

Human dignity has often been celebrated as the moral foundation of postwar international law, appearing prominently in the 1948 Universal Declaration of Human Rights and subsequent international instruments. However, the Nuremberg Trials reveal that the application of dignity was neither universal nor automatic. As Kateb notes, dignity was framed largely through a European philosophical lens, reflecting specific cultural assumptions about whose humanity was legible and worthy of legal protection. In practice, dignity became a selective principle: while the suffering of some groups was codified into law, others - like Roma - remained largely invisible (Kateb, 2011).

Reframing human dignity as a form of *legal memory* allows us to see this selective recognition not merely as omission but as an active process of constructing legal and historical narratives. Legal institutions do more than adjudicate crimes; they decide whose experiences are recorded, acknowledged, and remembered. When certain groups are omitted, their suffering is effectively erased from the collective legal conscience (Fricker, 2007; Trouillot, 1995). Roma's exclusion from Nuremberg exemplifies this dynamic: despite facing systematic extermination, their suffering was not memorialized in the legal proceedings, thus undermining the very dignity that international law claims to uphold.

This approach highlights the epistemic dimension of dignity. As Butler argues, some lives are recognized as worthy of mourning and legal recognition, while others are overlooked or excluded from such recognition (Butler, 2004). The Roma, historically marginalized and often stateless, were rendered ungrievable, their victimhood excluded from legal memory. Human dignity, in this sense, is not merely an inherent quality but a recognition that must be enacted through institutional acknowledgment. Without such recognition, legal frameworks risk perpetuating structural injustices even as they claim to protect universal rights.

Moreover, understanding dignity as legal memory emphasizes the temporal dimension of justice. Nuremberg was not only a court but also a project of historical documentation, a site where memory and law intersected to produce authoritative accounts of suffering. The selective memory established there has had long-lasting effects on international criminal jurisprudence. Contemporary tribunals and courts continue to grapple with similar challenges: whose suffering is documented, whose voices are included in proceedings, and whose narratives shape legal outcomes (Drumbl, 2012; Moyn, 2010). By examining dignity as memory, we can see that legal recognition is both retrospective - acknowledging past atrocities - and forward-looking- shaping ongoing understandings of

justice, accountability, and human worth.

Finally, this framework also provides a basis for reparative approaches. If dignity is inseparable from recognition, then restoring it requires both symbolic and material interventions. Memory-based reparations, public acknowledgment of historical silences, and participatory mechanisms that allow marginalized groups to document and interpret their own experiences become essential (Barkan, 2000; Nussbaum, 2011). For the Roma, integrating their experiences into the narrative of international criminal law is not only a matter of historical justice but also a vital step in ensuring that contemporary institutions embody the universality and inclusivity that Nuremberg initially failed to achieve.

4. Structural Legacy: Invisibility and Contemporary Justice

The long-term effects of Roma exclusion from Nuremberg are evident in contemporary justice systems. Roma communities in Europe continue to face discrimination, forced evictions, and social marginalization, while legal remedies remain limited (European Union Agency for Fundamental Rights (FRA), 2021). Even when Roma individuals or communities pursue human rights claims, they encounter procedural obstacles that reflect the historical invisibility embedded in international legal practice (Chang & Rucker-Chang, 2020).

A commitment to human dignity that neglects historical and structural marginalization reproduces the very hierarchies it seeks to address. Achieving justice, in Fraser's terms, requires participatory parity: all communities must have the capacity to contribute as equals to the formation of legal norms and narratives (Fraser, 2008). For the Roma, this entails actively addressing the epistemic exclusions inherited from Nuremberg.

4.1. Reimagining International Justice: Restorative Dignity and Memory inclusion

Addressing historical and structural exclusions requires a reimagining of international criminal law - one that emphasizes the restoration of dignity alongside accountability. The omissions at Nuremberg reveal that legal recognition and memory are inseparable: justice is incomplete if it fails to acknowledge all victims. Contemporary institutions must therefore actively integrate marginalized voices, not as an afterthought, but as a central component of justice.

One key approach involves *memory-based reparations*, which combine symbolic acknowledgment with practical measures. This includes formally recognizing historical exclusions, incorporating Roma experiences into legal education and archival records, and supporting Roma-led documentation projects (Barkan, 2000). These steps do more than provide material or procedural remedies - they affirm the humanity and dignity of those previously ignored.

Participation is equally crucial. Legal processes should allow marginalized groups to contribute directly to investigations, fact-finding, and reparative initiatives. This approach addresses past silences by giving communities the ability to represent and interpret their own experiences within legal frameworks (Spivak, 1988, p. 271–313). When victims' voices are included, their suffering is acknowledged and preserved, ensuring that justice

is not limited to the experiences of the historically dominant or visible groups.

Finally, international criminal law must be viewed as a living archive of collective memory. The historical erasure of Roma experiences at Nuremberg underscores the danger of incomplete remembrance (Levi, 1986). By embedding acknowledgment into legal processes, contemporary institutions can ensure that all victims are documented, commemorated, and represented. This approach transforms international law into a framework that both adjudicates wrongdoing and safeguards the dignity of historically silenced communities, ensuring that justice is truly inclusive.

5. Conclusion

The exclusion of the Roma from the Nuremberg Trials illuminates a profound tension at the heart of international criminal law: the law's aspirational universality versus its selective enactment. While the Tribunal sought to codify principles of accountability and human dignity after the Holocaust, it simultaneously constructed hierarchies of recognition that rendered some victims invisible. Interpreting human dignity as a form of legal memory makes this tension visible: it shows that law does not merely adjudicate crimes but also creates narratives about whose suffering counts and whose experiences are preserved in collective memory. In the case of the Roma, this selective memory constituted a structural injustice, denying recognition and shaping the moral framework through which subsequent international legal practices would operate.

Addressing this historical omission requires more than acknowledgment; it necessitates a reimagining of international justice as both retrospective and forward-looking. Legal institutions must actively integrate marginalized voices, not as an afterthought, but as a constitutive element of justice. Memory-based reparations, participatory frameworks, and the inclusion of Roma experiences in legal archives are critical steps toward restoring dignity that was historically denied. Such measures would not only address past exclusions but also create institutional precedents for more inclusive recognition in future legal proceedings.

Moreover, expanding the concept of dignity to encompass recognition challenges contemporary international law to confront its own epistemic limitations. By reflecting on how selective legal memory has shaped justice, and by integrating the lived testimonies of those historically silenced, scholars and practitioners can begin to restore the human dimension that law alone cannot capture. The Roma genocide, long absent from the legal memory of Nuremberg, thus becomes both a moral and methodological lesson: justice that neglects human voices is incomplete. Only by embedding remembrance - both legal and personal - within our frameworks of accountability can human dignity be meaningfully realized for all communities, particularly those historically silenced.

Remembering the Roma victims is not only an act of scholarship but an act of care. It reminds us that justice begins with the willingness to listen - even to voices the law once refused to hear.

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ADVANCING HUMAN DIGNITY IN THE DIGITAL ERA

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PROTECTION OF DIGNITY AT WORK IN THE CONTEXT OF PERSONAL DATA PROCESSING THROUGH ARTIFICIAL INTELLIGENCE

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***Abstract*:** *The protection of dignity at work represents a fundamental principle in both international and national labor regulations. The use of artificial intelligence to process personal data presents unique characteristics and risks in the context of labor relations, particularly from the perspective of dignity in the workplace. This article aims to explore some of these risks, referring to potential impacts on workers' personal lives, exposure to discrimination that affect dignity at work, and identify some mitigating measures. These practices could lead to illegal conduct that, while not intended by employers, might be overlooked, accepted, or even impossible to detect. In these cases, employer liability for the use of such technical means becomes significant.*

Keywords: *workplace dignity, personal data, artificial intelligence*

1. Dignity at work

The inherent dignity of all members of the human family is acknowledged by the Universal Declaration of Human Rights of 10 December 1948 in its Preamble and in Article 1. This principled, fundamental provision is the basis for reiterating human dignity as a fundamental value in many national and international laws whose resumption is no longer necessary.

The concept of dignity is complex and researchers continue to look for ways to build it as accurately as possible. It has been shown that dignity relates to several fundamental notions, namely: acceptance of identity, inclusion, acknowledgement, independence, autonomy and agency, humiliation, respect, seek of understanding, accountability, self esteem, empowerment, safety, transparency and communication, opportunity, self-reliance (Perrin, 2023, passim).Human dignity is a supreme value, which is the source and foundation of individual rights and freedoms (Stănescu-Sas, 2025, p.356).

Article 23 of the Universal Declaration of Human Rights also provides for elements of dignity at work. The Philadelphia Declaration adopted at the General Conference of the

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ILO, on 10 May 1944, also declares the importance of *dignity.* The preamble to the ILO Convention No 190 of 21 June 2019, reiterates the importance of dignity in preventing violence and harassment, noting that these acts affect the dignity of a person. Dignity at work is also enshrined as a principle in point 26 of Part I of the European Social Charter (revised) and Article 26 of Part II, lays down obligations on States regarding this value.

Article 31(1) of the Charter of Fundamental Rights of the European Union merely provides that every worker has the right to working conditions which respect his or her dignity, without providing elements establishing the content of this concept. However, the Explanations on the Charter of Fundamental Rights of the European Union (2007/C 303/02) state that this article *'is inspired [...] by Article 26 of the revised Social Charter'.*

In the Romanian Labour Code (RLC), dignity at work is laid down as a principle in Article 6(1) and Article 39(1)(e) while Article 5(5) identifies harassment as a form of discrimination, *defining it by its purpose or effect of violating the dignity of a person.*

Furthermore, Article 2(5^1) of Government Order No 137/2000 provides that psychological harassment at the workplace is defined by the purpose or effect of the deterioration of working conditions, by violating the rights or dignity of the employee. Paragraph 5(^{2}) includes in the notion of psychological harassment at the workplace as 'any *behaviour which, by its systematic nature, may impair dignity, [...]*'.

Regulation (EU) 2016/679 (GDPR) includes provisions on the protection of human dignity when processing personal data in the employment context in Article 88. Moreover, Article 9 of the same law prohibits the processing of personal data revealing personal characteristics that could constitute a ground for discrimination.

Dignity is a fundamental value referred to in the Preamble to Regulation (EU) 2024/1689 (Artificial Intelligence Act) in recitals 27, 28, 31, 48, 58 and 80. Dignity at work is also a value to be protected in accordance with recitals 9, 44, 57, 58 and 92 of the preamble to the same regulation. Next, Article 5(1)(f) of the same Regulation prohibits the placing on the market, putting into service for that specific purpose or use of AI systems to infer the emotions of a natural person in the workplace, except in cases where the use of the AI system is intended to be established or placed on the market for medical or safety reasons.

Human dignity is also protected by Article 7 of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, Vilnius, 2024.

The notion of 'dignity at work' has a complex content and specialists in different fields (psychology, sociology, law) have tried to provide a definition or explain its content from different perspectives, with real difficulties.

From a legal point of view, taking into account the current national and international regulatory framework, it follows that, in essence and as a matter of priority, dignity at work presupposes respect for the employee by both the employer and the other employees (for whom the employer is responsible), in particular by avoiding harassment, being subjected to hostile, offensive treatment, sometimes systematic, without this constituting a *sine qua non* condition, which constitutes a form of discrimination and is determined by discriminatory criteria, accompanying other discriminatory behaviour.

In doctrine, there are numerous attempts to define dignity at work from several perspectives, while also attempting to achieve a common interdisciplinary framework.

Thus, it has been shown that individual disaffection and alienation, exclusionary norms and practices, usually based on social identities (such as race, gender, or sexual orientation) or societal disrespect and exclusion, organizational, interpersonal and individual disrespect and exclusion, societal, interpersonal and individual disposability and expendability detract dignity (Gibson, Cristina e.a, 2023, passim).

Workplace dignity (WPD) is defined also as an 'individual's perception about respect and trust, equal treatment, valuation of one's worth, fair-treatment, autonomy and freedom of expression and decision making enjoyed by an employee at the workplace' (Tiwari and Sharma, 2019, p.8).

It has also been shown that there is an ambiguity regarding definitional parameters of dignity at work which affects research possibilities (Blustein and Allan, 2025, p. 496) and, of course, regulation and protection.

Indeed, a distinction must be made between dignity at work and the notion of decent work promoted by the International Labor Organization, which does not include individual levels of dignity and self-respect, and also in relation to the notions of well-being, which is a broad concept that is often identified as an outcome of dignity at work, or meaningful work (Blustein and Allan, 2025, p.492).

2. Personal Data Collected by the Employer. Risks

Employers process many personal data on employees, including those with a restrictive regime. In addition to the data on the identity of the employee, which must be included in the individual employment contract, the employer collects personal data of the employee in various ways. A number of data are provided voluntarily by the employee to the employer in order to be able to benefit from certain rights.

For example, in order to benefit from an individualised work schedule under Article 118 of RLC, from working at home or teleworking under Article 118^1 of RLC, from carers' leave under Article 152^1 of RLC, from the right to be absent in a family emergency under Article 152^2 of RLC, from paternity leave under Article $152^3$of RLC or from parental leave for children under the age of two, employees provide the employer with information on their family situation and family responsibilities. In order to benefit from temporary incapacity leave, including maternity risk leave or maternity leave, employees must present their medical certificate to the employer; although a numeric code for the disease is indicated therein, their nomenclature is public and it is easy to identify the disease from which the employee suffers. In order to benefit from additional leave, employees undergoing an "in vitro" fertilization procedure must submit a medical letter. In order to benefit from the protection provided by Government Emergency Order No 96/2003, the pregnant employee must notify her employer in writing of her situation. In order not to be dismissed and to benefit from a job appropriate to the work capacity established by the occupational medicine doctor, according to art. 64 of the Labor Code, the employee will present the respective medical document to the employer.

Performing a medical examination and presenting its results to the employer is mandatory for employment (Article 27 of RLC), periodically for certain activities (Article 28 of RLC), for performing night work [Article 127(1) of RLC], and when providing occupational health services (Article 186 of RLC).

It follows that the employer will be aware of many details about the state of health of the employee and members of his family and will be able to deduce what his family responsibilities are.

Other data are collected by the employer during the course of the activity, some of which interfere with the employee's private life.

Thus, many examples show an increase in the surveillance of employees at work, both by using cameras or geolocation means and by using more complex methods, such as attention monitoring, inferred from working speed, facial expressions, monitoring of movements at work, frequency of interruptions, monitoring of online activity, electronic correspondence, etc.

These means of surveillance are particularly problematic for workers who have a high degree of autonomy in organising work or working at home or teleworking, as well as platform workers.

For these workers, there is a blurring of the boundaries between working time and rest time, between working time and personal time. Continuous monitoring of these workers leads to the collection of personal data on their private life, the employer being able to know aspects of their private life that should not be known to them. For example, an employee who works in the field, with flexible hours and result-oriented work, and who uses a GPS-monitored car for travel, will be exposed to the collection of personal data on his private life, the employer being able to know if he has family responsibilities, a certain religious faith or other personal concerns that could influence his decisions regarding that employee (by observing frequent trips, for example to school units or certain places of worship).

The risks posed by the processing of such personal data are associated with discrimination in the workplace, in particular on the grounds of gender, family responsibility, religious beliefs.

3. Automated AI Processing of Employees' Personal Data. Risks

The development of AI technology has raised concerns among the public about the processing of personal data so that States must respond to these well-founded concerns through regulations and instruments that ensure the use of this technology in compliance with existing regulations in the field of personal data protection. (Franguloiu, 2023, p.39).

It should be noted that, according to point 4 of Annex III to the AI Regulation, high-risk AI systems are considered also tobe those systems intended to be used for the recruitment or selection of natural persons, in particular to place targeted job advertisements, to analyse and filter job applications and to evaluate candidates, as well as those intended to be used to make decisions affecting the terms of work-related relationships, the promotion and termination of work-related contractual relationships,

to allocate tasks based on individual behaviour or personal traits or characteristics, or to monitor and evaluate the performance and behaviour of persons in such relationships,

The existence of these rules, however, does not exclude the risk of impaired dignity at work (Moses, 2025, p.240).

3.1. Source of risks

The automated processing of personal data by AI systems, together with professional data, can take place both during the recruitment of staff and during the professional evaluation, the decision-making regarding the promotion of employees, the organization of the activity, the granting of wage rights, benefits and incentives and even with a view to dismissal.

The processing of personal data through AI systems presents a higher degree of risk determined by three elements that, taken together, may lead to undesirable results, in particular discriminatory conclusions, and to treatment that affects dignity at work.

(a) AI systems can collect additional data and correlate it with the data provided by the employee and the employer, and this operation, coupled with the risk of bias and the black box phenomenon, can lead to surprising results.

For example, AI can collect data on facial expression, tone of voice, fluency in expression in a particular language, focus, to determine data such as ethnic origin, nationality, gender, which should not be used in a discriminatory way. The same conclusions can be drawn by AIs from the collection of data on preferred sport, musical or literal preferences, data collected from social networks or data collected by internet search engines or various online platforms.

It can determine a person's age, generation, nationality also from the document metadata, such as the version of the software with which a curriculum vitae is written or the e-mail address.

(b) The existence of AI biases is a well-known and experimentally well-documented phenomenon.

AI knows what it is being taught and its sources of learning are often sources of bias, including in regard to labour relations. Artificial General Intelligence (AGI) models are apparently less susceptible to such biases, with wider sources of learning and procedures for removing biases, including human validation of responses. By contrast, AI models developed locally by an employer are more likely to be biased.

A well-known example is that of an AI system that was asked to select job candidates using an ideal model derived from the personal data of existing employees. In itself, this requirement makes sense, as the employer seeks to hire people with characteristics validated in the experience with existing employees. However, the AI model, learning from the CV of existing, predominantly male employees, linked gender to desirable occupational characteristics, placing female candidates at a disadvantage by default, in a discriminatory manner, even though it had been required to not discriminate against female candidates (Chen, 2023, passim).

Another example is where the dedicated AI system offered advertisements for well-paid

jobs to men rather than women, because this was found to be the trend in the labour market from the information held, taking over and perpetuating a prejudice and discriminatory behaviour (Datta, Tschantz, and Datta, 2014, passim).

(c) The essence of the black box phenomenon is that the human mind cannot understand certain automated decision-making processes of AI systems because of their complexity. In some models, based on the deep neural network, the existence of multi-layered networks of interconnected artificial neurons generates an incomprehensible complexity of decision-making which is extremely difficult to replicate. Other models, based on support vector machine ("SVM"), are opaque to human beings because they arrive at decisions by looking at many variables at once and finding geometric patterns among those variables that humans cannot visualize (Bathaee, 2017, p.901-903).

3.2. Risks in employment relationships

The risk posed by these three interrelated phenomena is that employees or potential employees are subjected to discriminatory treatment, including moral harassment in the workplace. Certain data and algorithms can generate patterns that are undesirable in employees and they can systematically disadvantage certain categories of people, based on age, gender, religion, nationality, etc.; the activation of these biases and stereotypes is sometimes done in relation to intermediate, secondary elements, not necessarily directly, especially when AI is trained to make decisions based on imputations related to sensitive information (Alessandro et al., 2025, p.5,6)

For example, the professional assessment of an employee may be negative as a result of taking into account his or her family responsibilities, which could lead the AI to conclude that the employee is less willing to travel long or is less involved in work, which obviously constitutes discriminatory treatment and, at the same time, a minimisation of the activity of that employee who can be very performing in reality.

In the same way, a prejudiced AI could conclude that an employee who has undergone an in vitro fertilisation process is rather concerned about her personal life and makes significant efforts in this direction, which decreases involvement in the workplace and, moreover, is likely in the coming years to acquire family responsibilities and to suspend her activity during pregnancy and to raise the child, and therefore she is not an employee with future prospects, which certainly constitutes discriminatory treatment.

These automated decisions that are based on the processing of personal data may lead to decisions by the employer that affect dignity at work. Such decisions may also concern involvement in certain activities, projects, assignment of work tasks, promotion. For example, an employee may be excluded from certain projects, isolated, minimised, disregarded and denied opportunities for promotion, career development, as a result of reports issued by the AI which show the prejudice that an employee with special family responsibilities or who has experienced some medical problems in the past, or has a disability, is less involved in work, is less efficient, less willing to work, to do extra work or work on days off, to travel for a long time, so that it would not be suitable for certain activities or for a management function, or that a female employee is less involved or

efficient only because of her gender, with the same discriminatory consequences. An AI system that makes an assessment of communication skills, based on voice analysis, can treat a person who does not speak the native language of the employer's country unfavorably, resulting in discrimination on the basis of nationality.

This type of occupational isolation, disregard in the workplace, refusal to recognize professional merits, caused by discriminatory treatment, affects the dignity at work itself.

4. Means to Mitigate the Consequences of Risk Factors

First, avoiding the risk of impaired dignity at work through the use of AI in the processing of employees' personal data is achieved through the training of AI, through the establishment of algorithms, generally through specific technical means. However, at least at this point in time, it appears that these do not provide absolute guarantees. Research shows that AI systems often exhibit the same biases as humans, generated by criteria provided by humans, especially programmers, along with their own inherent and unconscious biases, so that in many cases the outcome of AI decisions leads to discriminatory consequences (Katsabian, 2025, p.14).

In order to reduce as much as possible the consequences of risk factors, some measures applicable in the course of the employment relationship are essential.

These elements must be taken into account both from a legislative point of view and, in practice, by the employer's measuresin accordance with the principle of good faith.

(a) ***Predictability*** is closely linked to transparency and presupposes the existence of clear requirements that the employer establishes objectively, corresponding to a job, both for employment and for assessing the performance of the employee. It is necessary that the assessment criteria are not ambiguous, vague, do not cover elements that cannot be assessed objectively, leading to arbitrary results (Anghel, 2025, pp. 44-45).

This allows the employee to adapt his/her professional behaviour and to know what is the desirable professional behaviour corresponding to the job. In this way, the employee also has control over the correctness of his professional evaluation both during recruitment and during the employment relationship.

(b) ***Transparency*** *involves* informing employees about the use of AI systems and communicating professional requirements to them before the assessment period begins. At the same time, it implies the obligation of the employer to communicate and explain to the employees the results of the assessment, the reasons for which a certain result is established. Even if AI presents the phenomenon of blackboxing, the employer should, as far as possible, explain the results of professional assessments and demand such explanations from the AI system itself.

(c) ***The involvement of the human factor*** presents two aspects:

- supervision of AI by a human operator; it is true that AI systems are used precisely to streamline processes and eliminate the human factor, and the human operator cannot verify every AI decision, especially when there is a huge number of

employees; however, the human factor can supervise the work of the AI in order to be able to observe systemic errors, possible biases, undesirable results that have occurred systematically;

- the possibility for the employee to challenge the results generated by the AI before a human decision-maker, who can analyse the employee's objections, especially when the existence of discriminatory treatment is invoked.

The involvement of the human factor is essential given the fact that transparency is limited for technical reasons.

(d) ***Employer responsibility*** means that the employer is responsible for determining the negative consequences that the use of AI may have.

AI systems are merely tools, not independent decision-makers, and therefore cannot bear personal responsibility. However, the employer is financially liable for the damage suffered by an employee when that damage is caused by another employee, in the course of his activity, or by an asset of the employer, of course unless there is an exoneration of liability.

Finally, the deed or legal act belongs to the employer, even if it is based on an outcome provided by the AI. Discriminatory treatment, generally the treatment that affects dignity at work and causes non-material or even material harm, is attributable to the employer, not to the AI system used as a tool.

All the more so, when AI is trained and developed locally by the employer, the employer must be held accountable for its decisions if they affect dignity at work. Even if the employer uses an AI model provided by a third party, the question of liability arises in the same way. The employer may subsequently have their own claims against the AI supplier if it is ordered by the court to pay compensation to an employee.

Without employers' accountability, the risk of employees being subjected to treatment that affects their dignity at work would increase exponentially, as employers would claim in defence the responsibility of something that would never be able to respond. AI is not a natural, unpredictable, invincible phenomenon that exonerates employers from liability, it is a tool used consciously by the employer that must have full responsibility for the results of its use, answering patrimonially for the simplest fault, such as using a system that presents known risks that the employer, which it does not sufficiently supervise and does not correct.

The current legislation confirms this argument. Thus, Article 26(7) of the AI Regulation obliges employers to inform workers' representatives and affected workers that they will be subject to the use of a high-risk AI system; paragraph 11 requires deployers of such systems to inform the subjects to the AI decisions of the use of the high-risk AI system, and paragraph 9 requires deployers of high-risk AI systems to use the information provided by AI developers to comply with their obligation to carry out a data protection impact assessment under Article 35 of Regulation (EU) 2016/679 or Article 27 of Directive (EU) 2016/680.Thus, the employer having the obligation to carry out a risk assessment of the use of AI systems for the processing of employees' personal data, the failure to carry out this assessment or the wrong assessment, is an additional argument for attracting the

employer's pecuniary liability in case of discriminatory decisions affecting the dignity at work based on the use of AI systems.

Employers must act as guardians of professional dignity (Moarcăș, 2025) and prevent the negative effects of using AI in labor relations.

5. Conclusions

To avoid these risks, it is necessary for the employee to be aware, as far as possible, of the elements that were taken into account in the automated decision-making process and to have the opportunity to challenge this outcome and to have the challenge examined by the human factor.

It is also necessary to make the requirements for AI clear, to prevent discriminatory treatment and to ensure human oversight.

Risks to dignity at work arising from the processing of employees' personal data with AI cannot be totally excluded and the employer's responsibility for decisions taken on the basis of assessments and reports made by these systems, as well as for automated decisions adopted, endorsed and applied by the employer, must be applicable.

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POST-MORTEM DATA PROTECTION IN THE DIGITAL AGE: A NECESSITY FOR HUMAN DIGNITY?

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Abstract: *The rise of digital society raises new questions about the status of the digital remains of deceased individuals. Recent literature argues that such remains require protection similar to that afforded to bodily remains, due to their connection to personal identity. By framing post-mortem privacy as an essential component of human dignity, we show that protecting the digital remains of the deceased is necessary both to uphold informational self-determination and to ensure respect for the person beyond death. Drawing on recent developments in the domestic laws of several EU Member States, we argue that data protection law provides a particularly suitable framework for safeguarding human dignity in relation to digital remains. The issue is timely, as it is currently under consideration within the European "Digital Decade" policy programme.*

Key words: *data protection, Post-Mortem privacy, human dignity, right to self-determination*

1. Introduction

The rise of digital society raises pressing questions about the privacy of deceased individuals, whose digital data in most cases remains online. European data protection law has so far focused on living persons, leaving Member States free to decide whether to regulate post-mortem data protection – with uneven uptake.

This paper explores post-mortem privacy as a matter of human dignity. It first reviews how recent literature defines post-mortem privacy and its relation to dignity (2). It then analyses national data protection regimes across Member States from a comparative perspective, highlighting emerging trends (3). Finally, the study assesses how these regimes safeguard dignity through the idea of post-mortem privacy and concludes with recommendations for strengthening the EU framework to better protect human dignity in relation to the deceased (4).

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2. Extending the Dignity of the Deceased: The Role of Post-Mortem Privacy

This article argues that post-mortem privacy can – and should – be seen as a novel extension of the dignity of the deceased. The exploitation of one's digital data after death should be controllable in a similar manner as bodily remains are to be protected against unwanted manipulations or commercialization after death.

To this end, we will first examine how the fate of bodily remains is linked to protecting the dignity of the deceased (2.1), then address the issue of privacy protection in relation to digital remains (2.2).

2.1. Dignity of the Deceased: The case of Bodily Remains

There is a long-standing idea that the dignity of the deceased must be protected beyond death. A clear illustration is the treatment of bodily remains, which must respect the dignity of the deceased.

The protection of dignity is a supreme right of the individual. It appears in Article 1 of both the Universal Declaration of Human Rights and the EU Charter of Fundamental Rights. The protection of human dignity derives from the Kantian philosophy: "*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means*" (Kant, 1997, p. 38, [4:429]). This view of human dignity is implemented in the previously mentioned international treaties but also at the national level in Western jurisdictions. As a matter of example, dignity heads the list of fundamental rights in the German Constitution in Article 1 (1): "*Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt*".

What is true for the living individual is also true to a certain extent for the deceased. Even after death, human dignity commands that some respect is due to the deceased. The idea that the protection of human dignity extends beyond an individual's biological lifetime once again finds its source in Kant's philosophy, according to which each individual is entitled to assert the defense of the reputation of the deceased (*bona fama defuncti*) (Kant, 1996, p. 76, [6:295] f.).

This philosophy has long since found its way into civilian systems. The principles of modern private law generally aim to safeguard the human dignity of the deceased. One of the main emanations of this idea is the right of a person to decide what happens with their bodily remains and have these wishes honored. In Germany the concept of *Totenfürsorge* constitutes a personal, non-patrimonial right to decide how a deceased person is buried and how their body is handled (Muscheler, p. 349). This institution is primarily rooted in the constitutional guarantee of human dignity (Art. 1 of the German Constitution) and the general personality protection enshrined by case law (NJW 1954 1404, p. 1405). If the deceased has expressed wishes regarding burial, these prevail; if not, the close relatives are both entitled and obliged to decide on the disposition of the body and to determine the type and place of the burial (NJW-RR 1989 1159, p. 1160).

In Italy, the equivalent institution is the *ius sepulchri* (right of burial), a personal right recognized by case law. According to this principle, every individual is free to choose the

terms and location of their burial (*ius eligendi sepulcrum*). In the absence of an expressed wish by the deceased, the decision rests with the close relatives (known as the family *ius sepulchri*). Similar institutions are well established in other jurisdictions, such as Austria, France or Switzerland.

From a conceptual point of view, these institutions illustrate what we will refer to as the "protection of the bodily remains" in private law. This notion encompasses two elements. On the one hand, the intention of the deceased should prevail over the rights of close relatives; the right of disposition over bodily remains thus constitutes an extension of personal autonomy beyond death. On the other hand, where no instructions have been left, close relatives are under a duty to handle the bodily remains in a manner respectful of the deceased – that is, an obligation on the part of the survivors to treat the deceased with dignity. The underlying idea is that the right to determine one's post-mortem treatment is an extension of personal dignity and autonomy, persisting beyond death and balancing individual will with family and societal duties.

2.2. Post-Mortem Privacy: The Case of Digital Remains

In the wake of the development of information technology and the digitalization of society, the question arises as to whether the principles governing the protection of bodily remains should also, in some form, apply to digital remains. The parallel is based on the idea that post-mortem privacy would be an integral part of human dignity (2.2.1), while digital remains should be understood as a new form of bodily remains in digital form (2.2.2).

2.2.1. *Post-Mortem Privacy as an Extension of the Protection of the Dignity of the Deceased*

At the outset, it should be emphasized that the European conception of the right to privacy is rooted in the protection of human dignity (Whitman, 2003, p. 11). The right to privacy allows a person to control what others know about them and to decide what and how they want to reveal personal information. It prevents third parties from instrumentalizing individuals through the unauthorized collection or processing of their data (the primary aim of data protection) and safeguards the individual's capacity for self-determination and self-realization (the core concern of personality protection). As the Italian philosopher Luciano Floridi (2016, p. 308) argues: "*Privacy should be grafted as a first-order branch to the trunk of human dignity, not to some of its branches, as if it were a second-order right*". Human dignity is thus the normative root of privacy rights.

Yet, while dignity extends beyond death, the same is not as true for privacy. In principle, privacy protection ends upon the death of the individual, either by virtue of the adage "*actio personalis moritur cum persona*" in common law systems, or due to the extinction of personality rights in civil law systems (Stilinović, 2023, p. 213 ff). In most cases, indirect protection remains when an infringement upon the deceased simultaneously affects the honor of the surviving relatives. These considerations are obviously subject to punctual exceptions depending on the jurisdiction and sectorial

practices. This means that privacy after death is generally not recognized as a right of the deceased themselves, but rather as a derivative protection grounded in the dignity of the person and the interests of the living. In this context, there is a growing sense of a legal vacuum in the digital environment, where personal data do not disappear upon death but continue to circulate, be stored and exploited.

It is precisely this gap that has given rise to the notion of post-mortem privacy in legal scholarship, particularly in connection with the broader issue of digital inheritance (Buitelaar 2017, p. 129 ff; Edwards and Harbinja, 2013, p. 101 ss; Davey, 2020, p. 13 ff). Post-mortem privacy has thus emerged as a corrective measure to the loss of control that individuals experience upon death over their personal information saved online in the hands of third parties in the form of digital data (Edwards and Harbinja, p. 135 ff). It aims to extend the individual's ability to preserve the protection of their privacy beyond death, as this protection is increasingly threatened by the technological revolution.

The first sophisticated and authoritative definition of post-mortem privacy is that of Edwards & Harbinja, who formulated it in 2013 as "*the right of a person to preserve and control what becomes of his or her reputation, dignity, integrity, secrets or memory after death*" (Edwards & Harbinja, 2013, p. 103). Later, Harbinja (2020, p. 91) refined the definition, by stating that post-mortem privacy is "*the right of the deceased to control his personal digital remains post-mortem, broadly, or the right to data protection post-mortem, narrowly defined*". Her concept rests on the principle of autonomy, which should transcend death in the same way that testamentary freedom allows post-mortem control of property.

Several other significant contributions further enrich this discussion. Buitelaar advances the theory that the digital double of the deceased should be afforded "*an appropriate locus in the legal framework that governs the survival or extinction of the rights and duties of subjects*" (Buitelaar, 2017, 131 ff). His argument builds upon the notion of an informational self, suggesting that the privacy rights of this digital double should be regarded as a continuation of the ante-mortem individual's privacy rights, thereby compensating for the absence of a living counterpart (Buitelaar, 2017, p. 139).

In 2020, Davey proposed that the privacy right enshrined in Art. 8 of the ECHR should be extended beyond death and be conceived as "*the right of a person to respect for her private and family life post-mortem*". Central to her argument is the notion of "post-mortem relational privacy", according to which the privacy interests of the living are intimately connected to those of the deceased. Surviving relatives may suffer harm when private or intimate information about a deceased person is disclosed (Davey 2020, p. 183 ff.). Importantly, actual disclosure is not required for harm to occur; the mere risk of posthumous revelation may already infringe upon the privacy interests of the living (Davey 2020, p. 127).

We can therefore identify distinct normative grounds underpinning the same institution: the transcendence of a person's autonomy beyond death, on the one hand, and the protection of living persons as justification for the protection of the deceased, on the other.

The general idea that post-mortem privacy is an aspect of human dignity has been empirically confirmed by Harbinja, Morse & Edwards (2025, p. 11). In their survey, 80%

of the 1766 respondents answered that they "strongly agree" or "somewhat agree" to the affirmation "privacy is an aspect of human dignity".

These developments reveal a growing consensus that the protection of privacy must evolve to address the online persistence of personal identity in the form of digital data. Rooted in the concept of human dignity, post-mortem privacy thus emerges as a conceptual bridge between the autonomy of the deceased and the emotional integrity of the living.

2.2.2. *Digital Remains: Should They Be Afforded Protection Comparable to Bodily Remains?*

We now turn to whether digital remains should be afforded comparable protection to bodily remains based on the protection of post-mortem privacy. For this purpose, we first have to define what "digital remains" are – or mean. Öhman defines them as "*any* [*digital*] *data we leave behind: Facebook profiles, Spotify playlists and preferences, Google search histories, Zoom logs, emails, video games avatars, chat logs, photo libraries, and so on*" (Öhman, 2024, p. 48). This definition reflects the general idea that everyone leaves digital footprints online, which persist in the absence of any deliberate action to remove them.

Öhman and Floridi (2018, p. 319; 2017, p. 649 ff.) link digital remains to personal identity in much the same way as bodily remains are tied to the deceased individual. They argue that everyone leaves, besides bodily remains, an informational corpse – or informational body – after death (Öhman and Floridi, 2018, p. 319; 2017, p. 647; Floridi, 2014, p. 122). An informational corpse is an "[i]*norganic body of a human constituted and existing through information related to his identity*" (Harbinja, 2020, p. 91; Floridi, 2014, p. 122). This corresponds to Floridi's standpoint that data are not possessions but rather constitutive elements of one's identity (Floridi, 2014, p. 122; Floridi, 2016, p. 308). Within this framework, individuals are information and their data constitute an extension of their own identity and body. Therefore, violating someone's informational privacy is not just a breach of ownership but an attack on the person's dignity and, by extension, on humanity itself (Floridi, 2016, p. 308; Ohman and Floridi, 2017, p. 647).

The analogy between bodily remains and digital remains gains depth when viewed through Stokes' distinction between "self" and "person" (Stokes, 2016, p. 211 ff.; 2015, p. 240). While death terminates the conscious "self", the "person" – understood as a narrative identity – may continue to persist. The role of digital remains and bodily remains is therefore similar in that they preserve the narrative identity of the deceased.

In line with that approach, Öhman & Floridi (2017, p. 649 f.) suggest that the commercial use of one's digital remains after their death consists in a manipulation of one's informational corpse. Echoing Kant's philosophy, they support that "*Ethically, human dignity requires that digital remains, seen as the informational corpse of the deceased, may not be used solely as a means to an end, such as profit, but regarded instead as an entity holding an inherent value*" (Öhman & Floridi, 2018, p. 319). These authors further affirm that digital remains should be protected from commercial use to the same extent as bodily remains are protected by the International Council of Museums (ICOM). The latter provides that bodily remains must be treated in accordance with their inviolable human dignity and that "*all aspects of the commercial venture*"

should be carried out with respect for "*the intrinsic value of the original object*" (Article 2.10 of the ICOM Code of Professional Ethics 1986).

The protection of digital remains can thus be conceived in a manner conceptually analogous to the protection of bodily remains. Because digital data continue to represent and project aspects of personal identity, a protection inspired by the preservation of human dignity beyond death appears fully justified. In the context of this contribution, we focus on how data protection can serve this purpose.

3. Emerging Trends in National Data Protection Regimes Across European Union Member States

Post-mortem control of digital remains can be achieved through a data protection regime. Data protection is particularly appropriate insofar as it concerns absolute subjective rights that can be exercised *erga omnes* against any data holder. We will see that emerging trends in the European Union Member States' domestic data protection regimes aim to achieve some of the objectives of post-mortem privacy. For the purposes of this analysis, we assume that most digital data generated online by an individual qualifies as personal data within the meaning of the GDPR, given that true anonymization is rarely achievable in practice (Conti/Schoenenberger, 2025, p. 82 fn. 72).

One peculiarity at the European Union level is that post-mortem data protection falls outside the scope of the GDPR. Recital 27 explicitly provides that "[*t]his Regulation does not apply to the personal data of deceased persons. Member States may provide for rules regarding the processing of personal data of deceased persons*".

Currently, ten of the twenty-seven Member States have taken the opportunity to incorporate rules on the protection of the personal data of deceased individuals into their national legislation, in varying scopes and degrees of detail. These are, in alphabetical order, Bulgaria, Denmark, Estonia, France, Hungary, Italy, Portugal, Slovakia, Slovenia and Spain. Interestingly, the analysis of these regimes reveals emerging trends towards implementing the two identified aspects of post-mortem privacy: the data subject (ante-mortem) right to self-determination beyond death, on the one hand, and the (post-mortem) intervention of surviving relatives in the management of personal data after death, on the other hand.

Some Member States have established in their data protection acts mechanisms that allow the data subject's wishes, expressed during their lifetime, to determine the post-mortem fate of their data protection rights – and thus of their personal information in the form of digital data that they leave behind. These Member States enshrine, to varying extents, a right to informational self-determination over personal data after death. In France, the French Data Protection Act allows any person to define directives (which are amendable or revocable at any time) relating to the storage, erasure, and communication of their personal data after their death (French Data Protection Act, Art. 85). These directives define how the data subject wishes that their right to data protection be exercised after their death. The data subject may designate a person responsible for their execution. In the same vein, Hungarian law (Section 25 Para. 1 of the Hungarian Data Protection Act) provides that the data subject may authorize a third

party to exercise the rights conferred by Articles 15 to 18 and 21 of the GDPR by means of a declaration made to the controller and incorporated in a private document having probative force. Other Member States have limited themselves to establishing mechanisms that allow the data subject to limit or to prohibit the post-mortem exercise of data protection rights by the survivors authorized by the law. A compelling example is Art. 2-*terdecies* Para. 2 of the Italian Data Protection Act which provides that "*the exercise of the* [data protection] *rights referred to in paragraph 1 is not permitted* […] *when, limited to the direct offer of information society services, the data subject has expressly prohibited it by means of a written statement submitted to or communicated to the data controller*". Portugal, Slovenia and Spain have similar provisions in their data protection acts.

A more common legislative practice across Member States is the allocation of post-mortem data protection rights to survivors (close relatives and/or heirs). The said allocation is differentiated from one Member State to another. Danish law provides that the GDPR shall apply to the data of deceased individuals for a period of 10 years following the death of the data subject (Art. 1 Para. 2 *lit*. 5 of the Danish Data Protection Act). Italy grants the rights set out in Articles 15 to 22 of the GDPR to the authorized survivors (Art. 2-*terdecies* Para. 1 of the Italian Data Protection Act), while Spanish law only mentions the rights of access, rectification and erasure (Art. 3 Para. 1 of the Spanish Data Protection Act). Portuguese law mentions the same rights as Spanish law, but the list does not appear to be exhaustive (Art. 17 of the Portuguese Data Protection Act). Bulgaria (Art. 25f Para. 2 of the Bulgarian Data Protection Act) and Slovenia (Art. 9 of the Slovenian Data Protection Act) limit the post-mortem prerogatives to a simple right of access and/or a right to obtain a copy of the deceased's personal data.

We can observe that these legislative practices result in a certain symmetry with the protection of bodily remains.

On the one hand, we find that some Member States recognize an ante-mortem prerogative, namely a "right of disposition of the digital remains", allowing individuals to determine during their lifetime the fate of their personal data after death. This mirrors the traditional right to decide on the treatment of one's bodily remains.

On the other hand, we observe a post-mortem prerogative, namely a "right of management of the digital remains" granted to survivors, rather than a duty comparable to the duty of disposition of bodily remains. This shift from a duty to a right is justified by the difference in scale between handling a single human corpse and managing the multitude of digital footprints accumulated during a lifetime. Such a task is undeniably daunting, which makes it more appropriate to conceive it as a right for survivors rather than an obligation. The corresponding duties could instead be imposed on data controllers by emerging legal frameworks, given their *de facto* exclusive technical control over the deceased's digital data. Such obligations might arise only where survivors choose to exercise their post-mortem rights; yet a more general obligation imposed directly on data controllers, independent of any action by survivors, also remains conceivable.

The emerging system that is already enshrined in some Member States' national law, albeit still fragmented and incomplete, opens up the possibility of a comprehensive system that could eventually be extended at the supranational level in the GDPR.

4. Towards a Stronger European Union Data Protection Framework

Our analysis is particularly timely since consideration of legislative action at supranational level regarding post-mortem data protection is currently on the European agenda. The recently launched "Digital Decade" of the European Union sets targets for Europe's digital transformation to ensure a human-centric, inclusive, and sustainable digital future, strengthening Europe's digital sovereignty.

In this context, the European Declaration on Digital Rights and Principles for the Digital Decade was published with the idea of promoting a digital transition shaped by European values. It enshrines a set of digital rights and principles that reflect the EU values. In a sub-chapter entitled "Privacy and individual control over data", Chapter V Para. 19 states that "*Everyone should be able to determine their digital legacy, and decide what happens with their personal accounts and information that concerns them after their death. We commit to: a) ensuring that everyone has effective control of their personal and non-personal data in line with EU data protection rules and relevant EU law; b) ensuring effectively the possibility for individuals to easily move their personal and non-personal data between different digital services in line with portability rights; c) effectively protecting communications from unauthorised third party access; d) prohibiting unlawful identification as well as unlawful retention of activity records*".

We observe that the general idea of post-mortem privacy protection is already reflected to a certain extent in the Declaration, namely that the individual should have an effective control of their data beyond death and they should have their electronic communications protected from unauthorized third-party access (on this topic, see Conti, 2025, p. 50 ff) and should not be subject to unlawful retention of activity records.

While the idea of self-determination already seems to permeate the text of the Declaration, the role of surviving heirs and/or close relatives regarding the management of the deceased's personal data is not expressly stated. It is in our opinion crucial that European law also tackles the right of the survivors to take – subsidiarily to the intention of the deceased – the necessary measures to ensure that the informational body left behind is handled with dignity. Leaving aside the situation in which the person did not determine what should happen with their online information would most likely create legal uncertainty at the European Union level (Șchiopu, 2023, p. 19).

Such a right of the survivors could be conceived as a data protection prerogative. In this context, the surviving person would be entrusted with data protection prerogatives enabling them to manage the fate of the digital data left online by the deceased and, therefore, to manage the information consisting of digital identity elements left by the deceased. The shift from a duty to a right that we have identified in the practices of the Member States provides a useful starting point for considering how to integrate, in a coherent manner, the difference in nature between bodily remains and digital remains. It thus offers an opportunity to establish a regime for the protection of an individual's digital remains that must be conceptualized in an innovative way in the digital context while at the same time fulfilling functions equivalent to those associated with the control of bodily remains.

5. Conclusion

Post-mortem privacy should be understood as a novel extension of the dignity of the deceased. Despite their material differences, digital remains should be handled after death in a way that is – to a certain extent – functionally similar to bodily remains, insofar as both sustain the post-mortem presence of the person.

In that respect, data protection is expected to play a crucial role as informational bodies are composed of digital data which are also personal information (regardless of whether data protection law formally classifies them as personal data). In the wake of the Digital Decade, European law is expected to develop a legal framework aiming at managing one's digital legacy. To this end, it will be necessary to guarantee the data subject's right to informational self-determination by giving them the possibility to control during their lifetime the fate of their personal data after death, thus giving effect to a binding will that would be enforceable on third parties. Moreover, it will be necessary to conceptualise the situation in which the deceased has not taken any decisions during their lifetime: it will then be up to the European law to designate close relatives and/or heirs as custodians of the deceased's digital remains and potentially involve data controllers in the process by imposing corresponding obligations on them.

In a rapidly evolving digital environment, where the effectiveness of traditional legal institutions is still in question, one may wonder whether data protection regulations are sufficient to protect the "intrinsic value" of digital remains. In any case, the establishment of a post-mortem data protection regime would be an essential first step towards better protection of the dignity of the deceased – and thus of the living.

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OPENING GATE OR RISING WALL? SOME THOUGHTS ABOUT THE ACCESSIBILITY AND EQUALITY OF DIGITAL PUBLIC ADMINISTRATION IN HUNGARY

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Abstract: *Digitalisation is transforming public administration, offering efficiency and transparency. However, it risks excluding citizens who struggle with digital systems. In Hungary, automated decision-making and accessibility challenges reveal tensions between innovation and equality before the law. This paper argues that while digitalisation boosts efficiency, it can undermine substantive equality for vulnerable groups, especially persons with disabilities. Genuine digital progress requires a human-centred approach, inclusive design, and legal accountability.*

Key words: *digitalisation, disabilities, accessibility, human interference, vulnerable groups*

1. Introduction: From Automation to Accessibility

In the past decade, the Hungarian public administration has undergone a significant digital transformation, marked by the increasing use of online platforms, the introduction of digital citizenship, and automated decision-making, which is also already on the agenda (Czékmann, Cseh-Zelina & Ritó, 2022, p. 38). Earlier empirical research into automated decision-making in simple administrative cases revealed critical structural issues (Csatlós, 2024a, p. 35-38). These systems, which automatically match claim data with information stored in authentic databases, often deliver unexplained negative decisions that individuals struggle to challenge effectively. Legal remedies exist only in the form of judicial review, where courts are limited to assessing legality rather than fairness or factual correctness. Consequently, typographical errors or outdated records in official databases can result in unfavourable outcomes that citizens cannot easily correct without initiating a new administrative procedure (Csatlós, 2025, 184-189).

These experiences highlighted how transparency, proper and individualised reasoning, are central to the principle of *good administration* (Csatlós, 2025, p. 196; Chevalier & Menéndez Sebastián, 2022, p. 5-6). Personalised communication is, in many situations,

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more beneficial (Postma and Brokke, 2002, p. 142; Jos and Tompkins, 2009, pp. 1078–1079), especially at a time when the need for transparency and accountability in the public sector has never been greater (Naumovski et al., 2017, pp. 58–59) due to the necessary adaptation to the technological change (Carloni, 2024, p. 11) and when communication must adapt to clients' evolving needs, which are also changing due to digitalisation (Csatlós, 2023, pp. 20–21). Digitalisation without these human-centric elements risks producing what *Eubanks* discovered (2007, p. 134), and later called *"automating inequality"*—systems that efficiently reproduce existing injustices (2019). Against this background, this paper extends the analysis beyond automation to examine accessibility and equality in Hungary's broader digital public administration. It poses a simple but pressing question: if authority procedures are now only a click away, what happens to those who cannot click?

This is not a rhetorical provocation but a social and legal reality. As digital platforms become the default mode of governance, access to public services increasingly depends on digital literacy, connectivity, and adaptive technology. For many citizens—particularly persons with disabilities, the elderly, and those with low income—these prerequisites are absent. Thus, digitalisation, while formally universal, may in practice construct new barriers to participation and rights protection. The following sections examine this tension in the Hungarian context.

2. The Digital Scarp and Vulnerable Groups in Hungary

The promise of digital administration is accessibility for all. Yet, in Hungary, the *digital divide* remains profound (Budai, 2024a, p. 23). According to Eurostat, 24% of EU citizens aged 16 and over live with some form of disability. In Hungary, this proportion is around 22%—19.55% among women and 24.9% among men. More than half of these individuals are outside the labour market, and many experience poverty or social isolation (Statistics 1). Digital skills data paint a similar picture: only 31 % of Hungarians possess basic digital competencies, and among those aged 65–74, the proportion drops below 10 % (Statistics 2; Statistics 3). Internet use and digital activity among people with disabilities are lower than among those without disabilities. For instance, in the European Union in 2024, 87.2% of individuals aged 16–74 with disabilities had used the internet in the previous 12 months, compared with 95.2% of those without disabilities (Statistics 4).

These statistics reveal a strong overlap between disability, age, and digital exclusion—precisely among the groups who most rely on public services (Győrffy et al. 2023). It is not a country-specific phenomenon that some individuals are disadvantaged in multiple dimensions, and significant heterogeneity exists even within the same type of vulnerable group (Liu et al. 2025, p. 102019). In such cases, promoting digital inclusion is a complex task, and it is uncertain whether providing digital skills training for people without digital competencies or for citizens with disabilities alone will adequately address the issue, as envisioned by the National Digitalisation Strategy 2020-2030 (p. 115). People with disabilities encounter various barriers in accessing online administrative services. If websites fail to meet WCAG accessibility standards, they exclude blind, low-visioned, or deafblind people (Silverman, 2023; Zając and Królak, 2025); while cognitive barriers,

including overly complex language and the absence of easy-to-read versions, mean exclusion for others (Björnsdóttir, et al. 2024; Kjellstrand, et al. 2022). Technical and infrastructural issues—such as limited device or internet access and the high cost or incompatibility of assistive technologies—further restrict participation. Finally, insufficient user involvement in system design and limited staff training perpetuate social and institutional exclusion. In Hungary, *Piskóti and Bihariné Kalászdi* (2024, p. 129) recently also drew attention to the importance of including people with disabilities through various means, as currently widely accepted definitions of disability already include the influence and role of the social environment, as well as the fact that the fact of disability is accompanied by limited participation in social life. This factor further exacerbates the disadvantages of people with disabilities.

The Hungarian public administration has increasingly shifted administrative procedures online, from renewing identity cards to applying for social benefits. While these innovations enhance efficiency for digitally literate users, they simultaneously exclude others who lack access to devices, internet connectivity, or accessible formats. This exclusion is not merely technical; it has direct legal and social consequences as these processes may push others – typically socially vulnerable, digitally disadvantaged or disabled groups – increasingly further away from public services (Eurofound 2025; Grammenos, 2024, p. 116-117; Budai, 2024b, p. 5). A telling example is the *travel cost reimbursement system* introduced in 2022 for patients seeking medical care. Claims are submitted online, and the reimbursement is automatically calculated based on the distance between a hospital and the claimant's residence. However, if a hospital fails to upload a required data element, the system rejects the claim due to a data mismatch. Citizens typically receive no explanation and have no means to correct the error; legal remedies merely confirm that the system acted "lawfully". In practice, this leaves the most vulnerable—often persons with limited mobility—without reimbursement or recourse. The case illustrates how algorithmic rigidity can transform administrative legality into substantive unfairness (Csatlós, 2024, p. 36).

Such experiences expose the paradox of digitalisation: the more processes are automated, the less responsive they become to human diversity and error. Without a flexible and accessible design, the efficiency of digital administration risks eroding the right to good administration and equality before the law.

3. Accessibility as a Legal and Human Rights Obligation

Accessibility is not a matter of convenience but of legal obligation. Hungary's Constitution guarantees the protection of persons with disabilities and their equal access to public services (Fundamental Law of Hungary, 2011, Art. XV & XIX). At the international level, the *UN Convention on the Rights of Persons with Disabilities* (CRPD), ratified by Hungary in 2007, imposes a duty on States to ensure accessibility in all areas of public life, including digital environments (Art. 9). The Constitutional Court already clearly states in its decision 22/2019. (VII. 5.) AB that the rule of law requires not only the formal establishment of institutions, but also their operation, including the provision of budgetary resources (para. 86). This is particularly relevant when access to public

services affects one of the most vulnerable groups in society – people with disabilities – for whom the availability of services supplemented by human assistance and personal attention is a matter of fundamental rights, not a factor of convenience. Decision 3023/2015. (II. 9.) AB also argues that the State has a continuous obligation to promote accessibility, regardless of whether there is a specific deadline for implementation (paragraphs 24, 35). The fact that the State does not have an obligation specified at a specific time does not mean that its failure to do so would not constitute a violation of the law; individuals may claim a breach of rights if the failure to comply with this obligation results in a violation of their fundamental rights, such as the right to human dignity or freedom of movement (para. 39). This breach is particularly evident in the human interaction dimension in the world of digital administration, where the State's task is not only to provide the platform, but also to guarantee its so-called "functional accessibility" - that is, to ensure that everyone can actually use the services. Human intervention (e.g. personal administration, assisted online navigation, telephone customer service with a real human responder) is a key tool in ensuring this access.

The prohibition of discrimination and the promotion of equal opportunities are distinct yet closely related State responsibilities, applicable to areas such as the accessibility of public transport and other public services for individuals with various types of disabilities. Ensuring legal equality and respect for human dignity is a primary State obligation, while promoting equal opportunities is a legal option that becomes a duty when addressing objectively disadvantaged groups (e.g. by age, illness, or disability). The CRPD preamble recognises the inherent dignity and worth of all people, emphasising non-discrimination, autonomy, and full social inclusion. States Parties commit to taking legislative and administrative measures to realise these rights and to eliminate discriminatory laws and practices. The Ombudsman likewise highlighted that the CRPD's core principles—autonomy, independent decision-making, participation, and accessibility—are general obligations underpinning all detailed provisions. Member States have undertaken, inter alia, to take all appropriate legislative, administrative and other measures to implement the rights set out in the CRPD, to take all appropriate measures, including legislative action, to modify or abolish laws, regulations, customs and practices that constitute discrimination against persons with disabilities (AJB-222/2024, p. 12-13; AJB-1092/2022, p. 11; AJB-1622/2024, p. 3-4). Section 6 of the Act on the rights of persons with disabilities and ensuring their equal opportunities (Act XXVI of 1998), provides that persons with disabilities must have equal access to information of public interest, as well as to information concerning their rights and available services. Under Section 7 (1)–(2), persons with significant communication disabilities must be ensured appropriate conditions for receiving information and personal assistance when using public services. The opportunities of the information society reinforce equal opportunities for persons with disabilities, who are entitled to equal access to information when using such services. According to Section 4, information is equally accessible if it is understandable, interpretable, and perceptible to all—particularly for persons with mobility, visual, hearing, mental, or communication impairments—and if access is barrier-free for users (AJB-1092/2022, p. 13-14). Meanwhile, most recently, the State Audit Office of Hungary reported that 22 of 25 electronic forms examined were still inaccessible (2024).

Despite repeated reminders from internal control bodies, later international and domestic assessments continue to identify persistent deficiencies. In 2020, the *UN Committee on the Rights of Persons with Disabilities criticised* Hungary for failing to ensure accessible public services and reasonable accommodation, leading to the segregation of persons with disabilities (UN CRPD Committee, 2020). The European Parliament (2022) similarly urged reforms to align with the European Accessibility Act (Directive (EU) 2019/882).

These findings reflect a deeper normative shift: whereas earlier drafts of Hungarian law required authorities to "ensure" accessibility (T/6076), the law that entered into force only obliges them to "strive to ensure" it (Act CIII of 2023, 5. § (7)). This softening of language marks a subtle but significant retreat from enforceable equality. Accessibility is a precondition for the enjoyment of other rights; failure to guarantee it amounts to systemic discrimination (Roszewska, 2021, p. 173). The Hungarian experience shows how digital transformation, without corresponding regulatory vigilance, risks replacing traditional exclusion with technologically mediated exclusion.

4. Digital Inclusion Initiatives: Achievements and Limitations

Recognising these challenges, the Hungarian government has introduced several initiatives to improve access. Three deserve particular attention: the *Government Office Bus*, the *KONTAKT VRI* sign language service, and the *MIA Points* (AI Assistant Kiosks).

The *Government Office Bus* brings public administration to rural areas and citizens with mobility difficulties. In 2023, it reportedly served over 50,000 people (Soós, 2023, p. 240-243; KEMMA 2024). However, its accessibility is limited by physical and technical constraints: an ageing vehicle fleet, weak internet connections, and cramped space. For some clients, especially wheelchair users, boarding is impossible, and administrators cannot transport equipment to bedridden individuals. Thus, while the programme symbolises outreach, it often fails to reach those in greatest need. The *KONTAKT VRI* (Video Remote Interpreting) system offers sign language interpretation through online connection. In theory, it enables communication between hearing-impaired clients and administrators. In practice, its operation depends on the client's own internet bandwidth, compatible device, and digital competence. Moreover, the legal framework does not clearly define how such remote interpretation is to be formally integrated into administrative proceedings. With only 129 registered sign language interpreters serving thousands of potential beneficiaries, the system's capacity remains limited (Hungarian Association of Sign Language Interpreters, 2025; JTON, 2025).

The *MIA Points*, launched in 2022, are self-service AI-kiosks located at government offices and high-traffic public sites. Equipped with cameras, microphones, voice control, and speech recognition, they are intended to provide independent, human-free administration. In principle, such a design supports users with visual or hearing impairments. Yet, their actual use remains low—only around 5,600 transactions were recorded in early 2024—and most kiosks are situated within government offices themselves. For those who can already reach the office, direct personal service often remains simpler than engaging with a touchscreen machine, especially when the MIA kiosk is out of service (BM, 2023; BM, 2024).

Taken together, these initiatives reflect a sincere commitment to digital inclusion, but they also reveal its inherent limits. Most strategies continue to prioritise technological solutions, often overlooking the structural inequalities that hinder equal access—such as inadequate connectivity in rural areas, limited digital literacy and education, or the absence of clear procedural guarantees to ensure fairness and accessibility for all users. In this regard, Finland's approach provides a useful benchmark, demonstrating that accessibility requires what has been termed '*responsible digital administration*'—that is, systems designed with human diversity in mind from the outset, rather than merely adapted to it afterwards. Consistently ranked among the most digitally advanced EU Member States (COM 2024, Annex 3/2, pp. 2–5), Finland has adopted hybrid models that integrate technological innovation with direct human support. Public offices provide assisted digital services to those who need guidance in using online systems, while digital inclusion is systematically embedded into policy evaluation processes (Esko and Koulu, 2023, pp. 10–11). Moreover, Finnish scholars and policymakers have articulated a broader critique of artificial intelligence systems that treat citizens uniformly, rather than offering tailored and personalised public services capable of reflecting the diverse needs of individuals (Esko and Koulu, 2023, p. 13).

5. Conclusion: Towards Human-Centred Digital Administration

Digitalisation is irreversible and, when properly implemented, can enhance transparency, efficiency, and user satisfaction. However, as Hungary's experience shows, it can also deepen inequality when accessibility is treated as an afterthought. The challenge is not to halt technological progress but to *humanise* it. The birth of *Homo Digitalis* (Tóth and Kardosné Kaponyi, 2024, p. 55) is inevitable; what remains essential is to ensure that everyone can truly feel at home in this new digital world — not only those who were born into it, but also those who must adapt to it, and above all, those who require support to participate fully, including persons with disabilities.

A genuinely inclusive digital public administration should rest on three pillars. First, *hybrid service models* combining digital platforms with human assistance, ensuring that no one is excluded for lack of skills or equipment. Second, universal design, creating systems usable by everyone without requiring proof of disability or special adaptation. Third, training public servants in inclusive communication and awareness of accessibility needs, so that technology complements rather than replaces empathy. Ultimately, a State that can identify its citizens instantly, process data automatically, and issue tax assessments in real time, but cannot assist a person to complete an online form, is not truly modern; it is merely *efficiently unequal*.

Digitalisation is here to stay: Member States are continuing to progress towards the target of making 100% of key public services for citizens and businesses accessible online by 2030, and in 2023, the score was 79 of 100 (COM 2024, Annexe I. p. 39). Nonetheless, the development should be carried out in accordance with the *European Digital Rights and Principles*: putting people and their rights at the centre of the digital transformation and supporting solidarity and inclusion (EP, 2023, I-II). The pressing question is whether it becomes a gate that opens wider or a wall that quietly rises.

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ALGORITHMIC CONTRACTING, DISCRIMINATION, AND HUMAN DIGNITY IN TRANSPORT

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Abstract: *The rapid integration of Artificial Intelligence (AI) and predictive analytics into the transport sector has ushered in an era of "algorithmic contracting," where automated systems increasingly govern pricing, route optimization, service allocation, and even access to essential mobility services. While promising efficiency, this digital transformation presents a significant challenge to human dignity, inclusion, and non-discrimination. This article examines how these algorithmic practices can inadvertently embed or amplify existing societal biases, leading to new forms of discrimination based on factors such as location, socio-economic status, or perceived risk, thereby undermining individuals' fundamental right to fair and equitable access to transport. Drawing on principles from international human rights law and focusing on the evolving EU legal landscape (including the AI and GDPR Regulation, and anti-discrimination directives), this paper analyses the specific mechanisms through which algorithmic contracting can lead to discriminatory outcomes in transport. It argues that the opaque nature of these automated decisions, coupled with the often-unseen contractual terms they dictate, can erode personal autonomy, restrict participation in society, and diminish human dignity. The abstract highlights the urgent need for robust legal and regulatory interventions, proposing pathways for enhanced transparency, accountability, and effective judicial protection to ensure that the digital evolution of transport fosters, rather than undermines, justice, inclusion, and non-discrimination for all.*

Key words: *Algorithmic Discrimination, Human Dignity, Transport Law, EU AI Regulation, Automated Contracting*

1. Introduction

The integration of digital technologies in the transport sector has marked a rapid evolution over the past two decades, radically transforming the way people and goods move. Initially, digitalization focused on operational optimization: advanced GPS systems, real-time fleet tracking and automation of planning tasks. However, the turning point was the emergence of on-demand mobility platforms (ride-sharing), on-demand

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logistics services and intelligent traffic management. These systems not only collect massive data (Big Data), but also use complex algorithms to make autonomous and instantaneous decisions.

AI applications now cover essential functions related to route optimization (dynamic calculation of the most efficient routes, taking into account congestion, weather conditions and demand), smart logistics (automatic resource allocation - vehicles, drivers – and supply chain planning, managing inventories and establishing delivery times, having a direct impact on the schedule and income of drivers) and dynamic pricing (adjusting transportation rates in real time, depending on demand, supply and user profile).

This rapid integration has profound implications for access and equity of services.

1.1. The concept of algorithmic contracting – automated decision-making

The term algorithmic contracting describes that stage of digitalization in which AI systems are not limited to providing suggestions or processing data, but become decision-making agents themselves in the formation, execution and management of contractual relationships in the field of transport.

Unlike traditional contracting, where terms are established a priori or negotiated between the parties, in platform-based transport, AI decides and dictates: price (the algorithm establishes the final fare charged to the user for a given trip, based on a multitude of variables beyond distance, e.g. probability of accepting a higher price, usage history); access (the system decides which users receive a service, by allocating or refusing a driver, and under what conditions, e.g. waiting time); execution terms (The algorithm dictates to the partner drivers the optimal route, the required time and, implicitly, the related remuneration. In this context, contractual terms – especially price, duration and availability – are algorithmically generated and presented to the user as facts to accept or refuse, minimizing the contractual autonomy of the human party and transforming transactions into automatic decisions with binding effect).

1.2. Algorithmic discrimination and harm to dignity

The fundamental promise of AI in transport is efficiency – reducing costs, time and emissions. However, beyond the operational benefits, the uncontrolled implementation of algorithmic contracting introduces major risks of algorithmic discrimination, profoundly affecting equitable access to mobility and, implicitly, the human dignity and social inclusion of individuals.

This problem stems from two interconnected characteristics of AI:

1. Opacity (black box): The mechanisms by which algorithms make decisions (e.g. a higher price or a refusal of a service) are often unknown and unintelligible to users, but also to regulators, making it difficult to identify and combat harm.

2. Inertia of bias: Algorithms are trained on historical data sets that can reflect and often amplify pre-existing socio-economic or geographical biases (e.g., low-income areas that have been historically underserved). Consequently, automated decisions can lead

to discriminatory outcomes (e.g., differential pricing based on location or income, reduced availability of services in marginalized neighborhoods). Restricting access to mobility (Martens, 2012, pp. 1035–1053), an essential factor for participation in professional, medical, and social life, amounts to a violation of the right to equal treatment and undermines human dignity by limiting autonomy and opportunities.

This paper aims to analyze these mechanisms and propose appropriate legal solutions in the context of emerging European regulations.

2. Theoretical Framework: AI, Discrimination and Human Dignity

2.1. Defining Algorithmic Discrimination (AD)

Algorithmic Discrimination (AD) is an emerging phenomenon whereby Artificial Intelligence (AI) systems generate unfair or disadvantageous outcomes for certain groups of individuals, based on prohibited or protected criteria, even in the absence of an explicit discriminatory intent on the part of the programmers. In the transport sector, AD manifests itself by processing historical data that, by their nature, reflects and incorporates existing structural inequalities and socio-economic biases.

Automated contracting algorithms do nothing more than reproduce and amplify these inequalities through their operational decisions.

• Geographic and socio-economic bias: If training data shows that certain disadvantaged neighborhoods have historically generated fewer orders or presented a higher perceived risk (e.g. higher cancellation rates or longer wait times), algorithms can translate this into higher dynamic prices or reduced service availability. The system thus treats the areas as less profitable or riskier, indirectly discriminating against their residents (Barocas and Selbst, 2016).

• unfair decisions: AD in transportation results in the refusal or low prioritization of rides in certain areas (creating “mobility deserts”) or in the differential allocation of resources, limiting equitable access to an essential service.

To understand AD, it is crucial to understand the established legal distinction between the two main forms of discrimination:

1. Direct discrimination which occurs when one person is treated less favourably than another, in a comparable situation, on the basis of a prohibited ground (race, sex, nationality, etc.). This implies a clear intention to differentiate on the basis of the protected criterion.

2. Indirect discrimination which is the predominant form in algorithmic contracting. It occurs when an apparently neutral provision, criterion or practice (for example, an algorithm that only optimises profit) particularly disadvantages people belonging to a particular protected group. The algorithm may use neutral variables (such as the type of smartphone used or the postal code) but which have a strong correlation with a protected criterion (such as income or ethnic origin), thus producing an unintended discriminatory impact but with real effects (Cosma, 2020).

In the context of AI, the focus of case law and regulation (such as the EU AI Regulation) must fall on indirect discrimination, as the opacity of algorithms makes it difficult, if not impossible, to prove direct discriminatory intent.

2.2. Human dignity as a fundamental Right in the context of access to Services

Algorithmic discrimination in transport is not only a problem of economic inequality, but touches the very essence of fundamental rights, in particular human dignity. Human Dignity is a fundamental principle of the European legal order, serving as the basis for all other rights. It involves, among other things, ensuring the necessary conditions for a person to be able to fully develop and actively participate in social life (Drăghici, 2025, pp. 277-288).

In modern society, mobility is no longer a luxury, but an essential precondition for the exercise of other fundamental rights, such as access to work (Nenu, 2014, pp. 112-117) and education (Ionescu, 2018, pp. 594-599), access to health (hospitals, clinics), participation in civic and social life.

Restricting access to essential transport services for arbitrary, automated or discriminatory reasons amounts to a restriction on the individual's ability to function as a full citizen. This forced limitation of opportunities, dictated by an opaque system, directly harms personal autonomy and, implicitly, the dignity of the individual, by transforming him or her from an autonomous subject into a passive variable in the algorithmic equation (Mladenović, 2016, pp. 245–246). By undermining the ability to make informed choices and to have control over the essential conditions of access to vital services, AD in transport undermines the foundation of a society based on respect for human dignity and the principle of equal treatment.

3. Specific Algorithmic Discrimination Mechanisms in Transport

Artificial Intelligence (AI) systems in transport, despite the stated objective of optimizing efficiency, actually generate discriminatory results, affecting equity and access to services.

3.1. Dynamic Pricing (Price Discrimination)

Dynamic pricing is a technique for optimizing revenues by automatically adjusting, in real time, the cost of a service. Although the primary factor is the offer-demand report, advanced pricing algorithms use a complex user profile (developed through predictive analytics) to determine the maximum willingness to pay of each individual customer.

The variables included in the analysis can go beyond simple geographic location and time of day, including payment history and price acceptance, the type of device used (premium vs. low-cost smartphone) or battery level (signaling urgency), correlating the departure/destination postal code with socio-economic indicators (median income, density, lack of public transport alternatives).

This practice evolves from simple optimization to price discrimination, based on market segments or individualized price, without the user being aware of the factors that led to the displayed fare.

The impact becomes indirectly discriminatory when profile variables overlap with protected criteria, accentuating socio-economic inequality (van Dijk, 2020, pp. 244–248) by overcharging vulnerable groups and creating a hidden cost of poverty.

3.2. Route optimization and Service allocation

Service allocation and route optimization algorithms are designed to maximize overall network efficiency (profit) and driver safety. To achieve these goals, they can systematically exclude or deprioritize certain geographic areas from the service network.

Deprioritization criteria may be neutral at first sight, but have a discriminatory effect:

- Low Profitability: Areas with low order density or high probability of generating high waiting time (costly for the platform).
- Perceived Risk: Areas with unfavorable historical data on cancellation rate or incidents, which can be correlated with socio-economic indicators.
- Creation of "Digital Mobility Deserts": By deprioritizing or excluding marginalized neighborhoods, digital transportation platforms limit residents' access to a form of mobility that is often faster and more flexible than public transportation.
- Limiting Access to Opportunities: Residents in these areas are disproportionately affected, having increased difficulties in reaching job interviews, educational institutions or medical centers located outside the central areas. This automatic restriction of mobility reinforces spatial segregation and undermines social inclusion, transforming a logistical optimization decision into a social barrier.

3.3. Risk assessment and access to platforms (Ratings and Exclusion)

Many transportation platforms use automated rating and risk analysis systems to manage relationships with both service providers (drivers) and users. These AI systems analyze interactions, behavior (cancellations, delays, complaints) and other contextual data to assign a trust/risk score.

Based on these scores, the system makes critical automated decisions: on the one hand, for drivers, the decision to suspend, permanently deactivate, or preferentially allocate rides; on the other hand, for customers, the decision to limit access to certain services, require advance payment, or associate with drivers with similar ratings.

The mechanism raises serious issues of procedural fairness and leads to inequitable outcomes that concentrate benefits and externalize costs to specific groups (Tiwari, 2025). The exact criteria on the basis of which a driver or customer is penalized (or excluded) often remain vague and unpublished. A low rating may be the result of factors beyond the driver's control (e.g., traffic problems, unreasonable customer expectations) or may be influenced by subtle customer biases (e.g., implicit discrimination based on name, physical appearance, or language). An automated decision to deactivate an account, made based on an opaque algorithm, represents a direct restriction on livelihoods and the right to work. Without a real, humane and transparent possibility of appeal, the principle of *audi alteram partem* (the right to be heard) is violated. Because the decision is perceived as being made by a machine, there is no responsible "person" that the user can hold accountable, eroding trust and undermining the fundamental right to an effective remedy.

4. Legal Framework and Need for Intervention

The analysis of algorithmic discrimination mechanisms highlights a critical discrepancy between the rapid pace of technological innovation in the transport sector and the slow evolution of the regulatory framework. Legislative intervention is urgently needed to ensure the alignment of algorithmic contracting with fundamental principles of law, in particular non-discrimination and respect for human dignity.

4.1. International Law and non-discrimination standards

The foundation of any technological regulation must remain Human Rights. The Universal Declaration of Human Rights (UDHR), in particular Article 1 (all human beings are born free and equal in dignity and rights) and Article 7 (all are equal before the law and are entitled to equal protection), establishes a universal standard of non-discrimination.

Although the UDHR was conceived before the digital age, its principles are timeless: any system, whether human or technological, that governs access to essential services must respect equality and dignity. Technology, especially AI, is not a zone of moral or legal neutrality; on the contrary, it becomes a critical factor in the realization or obstruction of these rights. International law therefore imposes a positive obligation on states to regulate so that the development and use of AI do not erode fundamental rights.

4.2. Legal basis in the European Union

The European Union has taken a pioneering approach to technology regulation, providing the most relevant legal instruments to combat algorithmic discrimination in transport.

The GDPR, focusing on the processing of personal data (Duminică, and Tabacu, 2018, pp. 237–245), is the basis for algorithmic contracting. Article 22 of the Regulation prohibits, in principle, decisions that produce legal effects or significantly affect a person and that are based solely on automated processing (including profiling). This is a direct barrier against automated exclusion or discrimination (e.g. rejecting a ride request or deactivating a driver's account). Although not explicitly defined as an absolute right to explanation, the GDPR provides the data subject with the right to obtain human intervention, to express their point of view and to contest the decision. While the GDPR provides a framework, access to transport can be argued to be a service of such socio-economic importance as to justify a stricter interpretation of Article 22, considering that any refusal of service or significant price increase based on automated profiling significantly affects the citizen.

The Artificial Intelligence Regulation (AI Act) is the EU's preventive instrument and is essential for managing the systemic risks generated by AI.

• AI systems used in transport crucially fall into the high-risk category, in particular those that significantly impact fundamental rights and safety, including systems intended to be used for the management and operation of critical digital and transport infrastructure (safety risk), systems that impact access to public and essential services

such as transport (risk of discrimination and exclusion).

• Classification imposes strict obligations on AI providers, including risk management systems: assessment and mitigation of risks, including risks of discrimination; detailed obligations on data quality (to reduce bias), record keeping (logs) and technical documentation; the requirement to design the system in such a way as to allow for effective human supervision, which can intervene, interpret and overturn automated decisions, thus combating the erosion of autonomy (Veale, and Reuben, 2017).

Despite the robust EU framework, the effective enforcement of the law against algorithmic discrimination in transport faces major obstacles.

The main difficulty is the opacity of algorithms (black box problem). In discrimination disputes, the burden of proof often falls on the claimant, who must demonstrate that he was treated less favourably (direct discrimination) or that a neutral practice disproportionately disadvantaged him (indirect discrimination). Without access to the algorithm's source code or training datasets, it is virtually impossible for a user to demonstrate that there was a discriminatory intention or even to identify precisely the variable that led to the unfavourable decision (e.g. why the price was double).

The traditional legal solution involves shifting the burden of proof to the defendant (platform operator) once the claimant presents facts suggesting possible discrimination. However, operators can invoke trade secrets or technical complexity, blocking access to the decision-making logic. For end-users (customers or independent drivers), access to justice is often complex, expensive and inefficient. Many transportation platforms include mandatory arbitration clauses in user contracts, eliminating the possibility of resorting to civil or administrative courts. Internal appeal procedures (imposed by the GDPR or AI Regulation) are often overseen by the same company that implemented the algorithm, raising questions about impartiality. Algorithmic decisions are instantaneous, while judicial processes take years. This gap makes a late appeal not an effective remedy for a decision that immediately affects access to essential services or livelihoods.

5. Recommendations

To counter the risks of algorithmic discrimination and the erosion of human dignity in the transport sector, strategic and multilateral regulatory interventions are needed. These should aim to improve transparency, ensure the inherent fairness of the systems and facilitate effective judicial redress.

5.1. Solutions focused on Transparency

Transparency is not just about communicating the existence of an algorithm, but about the logical openness of the decision-making process (explainability), essential for holding the platform accountable.

Regulation should impose an obligation of explainability that goes beyond the general requirements of the GDPR. If an automated decision in transport produces a significant adverse effect (e.g. an exorbitant price, a refused route, an account deactivation), the user is entitled to a clear, concise and unambiguous explanation.

This explanation should not reveal trade secrets, but should provide a functional understanding of the logic: identifying the main contributing factors that led to that specific result (e.g., the price was increased by X% due to a demand rate Y times higher than average and the history of accepting increased prices); explainability should demonstrate that no protected criteria (race, gender, income, socio-economic location) were used, directly or indirectly, in setting the price or access.

To combat opacity (black box) at a systemic level, it is crucial to introduce the requirement for mandatory algorithmic auditing for AI systems in transport classified as high-risk (according to the AI Regulation). Audits should be carried out by accredited conformity assessment bodies independent of the service provider. The main task is to detect and quantify biases in the training datasets and to assess the disproportionate impact of algorithmic decisions on protected groups. This involves testing the system under simulated conditions to see whether people from certain areas or with certain profiles are indirectly discriminated against.

5.2. Equity-focused solutions

Regulation must shift the focus from simple compliance to ethical system design (Santoni de Sio, 2025, pp. 713–726).

The principle of meaningful human oversight is vital to reintroducing ethical judgment and context into the decision-making chain. Critical decisions, especially those leading to permanent exclusion (e.g. disabling a driver's account, which affects their livelihood) or to substantially restricting a customer's access, should not be purely automated. They should always be subject to competent human review before being implemented. The human supervisor must have the real power to overturn the algorithmic decision if it is considered unfair, discriminatory or factually incorrect, ensuring a degree of procedural fairness (AI HLEG, 2019).

Future regulation should impose a framework for fairness by design (Design for Inclusion/Fairness by Design). Platforms should not only pursue economic efficiency goals (maximizing profit), but should include non-discrimination and inclusion metrics as explicit optimization goals. For example, an algorithm should be penalized internally if it consistently assigns significantly higher prices to low-income neighborhoods. Providers should be required to use training datasets that are representative of the entire population they serve, eliminating sources of digital redlining (geographic bias).

5.3. Effective judicial remedy

The effectiveness of any right depends on the existence of an accessible and functional judicial remedy. To cope with the speed of algorithmic decisions and technical complexity, access to justice for citizens must be simplified (Tabacu, and Soare, 2013, pp. 65–86).

In the case of opaque algorithmic decisions, the law should facilitate the transfer of the burden of proof. Once a user presents facts suggesting a disproportionate impact of an automated decision, the burden of proving that the algorithm is not discriminatory

(that it was designed with principles of fairness) must fall on the platform operator. The creation of mediation or arbitration bodies specialized in technological disputes would be of real use. These should have the technical capacity (AI experts) to examine the algorithmic logic (under the protection of confidentiality) and to issue quick and enforceable decisions

6. Conclusions

This paper has analysed in depth the transition of the transport sector towards algorithmic contracting, demonstrating that while innovation based on Artificial Intelligence (AI) promises economic optimization, it simultaneously introduces systemic risks of indirect algorithmic discrimination. Mechanisms such as dynamic pricing and automated resource allocation are not neutral; they perpetuate and amplify socio-economic and geographical biases embedded in historical data. Automated decisions in transport are therefore not just simple commercial transactions, but acts with significant legal effect, which can obstruct fair access to mobility – an essential precondition for the full exercise of rights and, implicitly, for the respect of human dignity and personal autonomy.

In conclusion, the digital evolution of transport must be guided not only by the logic of profit and efficiency, but, first and foremost, by the imperative of public ethics and social justice (Ciurea, 2022, pp. 163–179). Legislators and platform operators have a legal and moral obligation to ensure that the digital architecture of mobility is designed according to the Design for Inclusion principle, guaranteeing that technological innovation does not undermine the fundamental right to equal treatment and the dignity of every citizen in the face of an increasingly automated contractual system (Zdravkova, 2019, pp. 112–117).

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THE POTENTIAL DISCRIMINATORY EFFECT ON PERSONALITY RIGHTS OF ARTIFICIAL INTELLIGENCE SYSTEMS USED IN EMPLOYMENT AND THE LEGAL INSTRUMENTS TO COMBAT THIS EFFECT

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Abstract: *In a context where Artificial Intelligence is increasingly becoming part of our everyday lives, bringing considerable and undeniable improvements and facilitating many activities that used to be very time-consuming, the issue that constantly arises is that of identifying the legal means to mitigate the risks arising from the increasingly widespread use of AI systems. In this context, the adoption of the EU AI ACT represented an extremely important step forward at European level in terms of AI regulation.*
This paper aims to analyse how artificial intelligence systems used in employment can infringe on personality rights and what mechanisms AI ACT offers to counteract or at least limit these harmful effects.

Key words: *Artificial Intelligence, employment, personality rights, discrimination.*

1. Introduction

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828, referred to as AI ACT for short, a name we will continue to use throughout our analysis, represents the first comprehensive regulation on Artificial Intelligence adopted at the European level, whose main purpose is "to improve the functioning of the internal market by laying down a uniform legal framework in particular for the development, the placing on the market, the putting into service and the use of artificial intelligence systems (AI systems) in the Union, in accordance with Union values, to promote the uptake of human centric and trustworthy artificial intelligence (AI) while ensuring a high

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level of protection of health, safety, fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, including democracy, the rule of law and environmental protection, to protect against the harmful effects of AI systems in the Union, and to support innovation." (https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng)

The AI Act was formally adopted by the European Council on May, 21, 2024 and then published in the Official Journal of the European Union on July, 12, 2024. The Regulation entered into force on August 1, 2024, but the requirements of the of this Act will start applying gradually.

Most of the provisions will start applying from August 2nd, 2025. This is also the deadline for the Member States to report to the Commission on the status of the financial and human resources of the national competent authorities, to designate national competent authorities (notifying authorities and market surveillance authorities), communicate them to the Commission, and make their contact details publicly available, lay down rules for penalties and fines, notify them to the Commission, and ensure that they are properly implemented. (https://artificialintelligenceact.eu/implementation-timeline/.)

2. What is Artificial Intelligence?

A comprehensive definition of artificial intelligence is difficult to provide, given the complexity of this notion and the evolution of the concept over the time. As doctrine emphasized "a strong definition, that maintains its accuracy over decades, has always remained elusive" (Steckelmacher and Bogaerts, 2025, p. 81-103), as "there are countless competing definitions for artificial intelligence" (Westerstrand, S., 2025, p. 2).

However, the regulation requires from the very beginning that "the notion of 'AI system' in this Regulation should be clearly defined and should be closely aligned with the work of international organisations working on AI to ensure legal certainty, facilitate international convergence and wide acceptance, while providing the flexibility to accommodate the rapid technological developments in this field. Moreover, the definition should be based on key characteristics of AI systems that distinguish it from simpler traditional software systems or programming approaches and should not cover systems that are based on the rules defined solely by natural persons to automatically execute operations." (https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng).

I consider the key element of the rigors imposed on such a definition to be its flexibility to accommodate to the technological developments in the field, given the accelerated pace at which these developments are taking place. Such a requirement is not at all easy, as the challenge of identifying such a comprehensive definition is considerable.

Based on the imperatives I referred to above, the definition provided by Art. 3 of the AI Act refers to the 'AI system' as "a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to

generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments".

The definition implies that such a system has a certain degree of autonomy (which varies from one system to another) and adaptability, being able to generate predictions, content, recommendations, or decisions, while, at the same time having the capability to influence the environments it interacts with.

3. AI benefits and risks

Presented by the AI ACT as "a fast evolving family of technologies that contributes to a wide array of economic, environmental and societal benefits across the entire spectrum of industries and social activities," the AI can, at the same time provide key advantages in various domains (such as healthcare, education, security, justice, etc.) and generate risk and cause material and immaterial harm to the protected fundamental and personality rights.

To limit the risks arising from the use of AI systems, the new regulation establishes harmonized rules for the placing into market and the use of AI systems in EU, prohibits some AI practices which are considered to pose a certain risk on fundamental rights while at the same time setting some specific requirements for high-risk AI systems and obligations for operators of those systems.

Without going into further detail, we will just point out, as examples, the following systems, which, according to the AI EU ACT, are considered to have an unacceptable degree of risk and, as such, fall into the category of prohibited systems: AI system that deploys subliminal techniques beyond a person's consciousness or purposefully manipulative or deceptive techniques; AI system that exploits any of the vulnerabilities of a natural person or a specific group of persons due to their age, disability or a specific social or economic situation; AI systems that create or expand facial recognition databases through the untargeted scraping of facial images from the internet or CCTV footage, etc.

With regard to high-risk AI systems, the AI ACT includes the following types of systems in this category: AI systems used in biometrics; critical infrastructure, educational and vocational training; employment, workers' management and access to self-employment; access to and enjoyment of essential private services and essential public services and benefits; law enforcement; migration, asylum and border control management; administration of justice and democratic processes.

4. AI Systems used in employment, workers' management and access to self-employment

Some of the systems classified by AI ACT as high risk are, as we saw above, those used in employment, workers' management and access to self-employment. Annex III of the AI ACT includes here (a) the AI systems intended to be used for the recruitment or selection of natural persons, in particular to place targeted job advertisements, to analyze and filter job applications, and to evaluate candidates as well as (b) AI systems

intended to be used to make decisions affecting terms of work-related relationships, the promotion or termination of work-related contractual relationships, to allocate tasks based on individual behaviour or personal traits or characteristics or to monitor and evaluate the performance and behaviour of persons in such relationships.

As emphasized by the doctrine, "these use cases cover the entire life span of a contractual relationship. They can be categorised into two phases, with one phase being the time before a contract has been concluded and the other phase being the time in which the parties perform the contract" (Voigt and Hullen, 2024, p. 44 – 119).

In the first category, that of high-risk systems used prior to the conclusion of an employment contract, we can include, for instance "sourcing system that specifically identifies potential employees (or freelancers) with a suitable skills profile and contacts them for the purpose of concluding a contract" (Voigt and Hullen, 2024, p. 44 – 119), while in the stage following the conclusion of the employment contract, AI systems could be "used to adjust the terms and monitor performances in the context of the contractual relationship (…) various types of information, e.g. working hours, workloads or performance indicators, can be recorded and analysed by AI systems. AI systems can optimise processes and distribute tasks according to this analysis in order to increase efficiency" (Voigt and Hullen, 2024, p. 44 – 119).

As we have seen above, these categories of systems also present an increased risk, given that they are meant to monitor the employees' performance, to evaluate it, to promote them, etc., so the impact on their future careers is consistent.

5. The potential discriminatory effect of AI systems used in employment on personality rights

Among the main advantages of using AI systems in employment, the literature refers to the increased efficiency of the recruitment process, shortening the time allocated for this purpose; reduced unconscious biases, while the companies that use such systems are considered more innovative than the others, which help improving their reputation on the market (Xiong and Kim, 2025).

The main reason for classifying those systems as high-risk is linked to the impact they are likely to have on the future career prospects, livelihoods of those persons as well as on workers' rights. At the same time there is a great risk for those systems to perpetuate historical patterns of discrimination (for example against women, persons with disabilities, person of certain origin, racial or ethnic, etc.) when used in recruitment, evaluation, promotion, etc. The rights to data protection and the to privacy are also at risk when AI systems are used for monitoring the performance and the behaviour of employees.

6. Fundamental rights impact assessment for high-risk AI systems.

Article 27 of the AI Act establishes the obligation of the deployers of high-risk AI systems to perform an assessment of the impact on fundamental rights that the use of such systems may produce, before deploying such a system. Deployers are considered

the bodies governed by public law or the private entities providing public services.

According to the above mentioned article, the assessment consist of:

"(a) a description of the deployer's processes in which the high-risk AI system will be used in line with its intended purpose;

(b) a description of the period of time within which, and the frequency with which, each high-risk AI system is intended to be used;

(c) the categories of natural persons and groups likely to be affected by its use in the specific context;

(d) the specific risks of harm likely to have an impact on the categories of natural persons or groups of persons identified pursuant to point (c) of this paragraph, taking into account the information given by the provider pursuant to Article 13;

(e) a description of the implementation of human oversight measures, according to the instructions for use;

(f) the measures to be taken in the case of the materialisation of those risks, including the arrangements for internal governance and complaint mechanisms."

The provision contained by Art. 27 of the AI Act is considered to be "a decisive and unprecedented step for the protection of fundamental rights of people. The FRIA (Fundamental Rights for Impact Assessment) represents a crucial obligation, requiring deployers of some high-risk AI systems to conduct comprehensive evaluations of potential impacts on FR prior to deploying the AI system" (Bertaina et al., 2025).

The obligation of conducting a fundamental rights impact assessment of the high-risk systems is applicable for the first use of those systems, but if, during their use the deployer appreciates that any of the above mentioned elements has changes or is no longer up to date, he needs to take measures for updating the information. This obligation is stipulated by par. (2) of the same Article.

The deployer has also the obligation to notify the market surveillance authority of the results of the assessment, once it has been performed.

7. Conclusions

As we have seen in our analysis, an important step taken by the adoption of the EU AI ACT was the classification of AI systems according to the degree of risk they pose to individuals' fundamental rights, in which sense we identify AI systems which pose unacceptable, high, limited and minimal risk.

Among the high-risk systems, the Regulation includes also AI Systems which are used in employment, workers' management and access to self-employment, due to the potential discriminatory effect they might have as well as influence on the future careers prospects.

In this context, one of the legal instruments which is meant to limit the potential harmful effects of these systems on fundamental rights is the obligation of the deployers of high-risk AI systems to perform an assessment of the impact of those systems on fundamental rights.

At the same time, in order "to ensure that the legal framework remains adaptable, future-proof, and responsive to emerging risks, technologies, and societal expectations

(…) the EU Artificial Intelligence Act incorporates the use of delegated acts, enabling the European Commission to update specific provisions, such as the list of high-risk AI systems, without undergoing the full legislative process" (Madl et al., 2026, p. 203-218).

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NON-DISCRIMINATION IN THE CURRENT DIGITAL ERA IN RELATION TO THE LEGAL FRAMEWORK OF THE EUROPEAN UNION

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Abstract: *Tackling discrimination is a core policy challenge in EU strategies for the construction of a shared legal identity. In the present quest, they constitute a reference framework for all interactions between competitiveness and economic growth on the one hand, and individual fundamental rights on the other. Discrimination and inequality constitute a major source of concern. The penetration level varies with the nature and weight of the discrimination but should not reach the autonomy of national competences. The rise of digital technologies has had a profound impact on almost every aspect of our societies. The new Digital Age, a period characterised by rapid and constant innovation, an urgent need for development, and new technologies, tools, has become a defining characteristic of our lives. In this scenario, the challenges of managing innovation, digitisation and new technology have been placed centre stage by the European institutions as one of the priorities in the development of the Union. The objective is clearly to take advantage of the opportunities that the new technologies bring for all Europeans and for society as a whole, while also reducing the associated risks of discrimination in digital spaces.*

Key words: *non-discrimination, digitalization, equality, algorithmic bias*

1. Introduction

Non-discrimination is a principle whereby population groups should not be treated differently, nor should they be treated less favourably, in a comparable situation without an objective and reasonable justification. For the purposes of this principle, discrimination is more particularly understood as being any distinction, exclusion, restriction or preference in the access to or supply of digital services which impairs the right of some people to receive or provide services available and accessible to the public (Cellini, 2015). The digital transformation has brought about substantial changes in the production and distribution of goods and services, and it is impacting different sectors to a greater or lesser extent. Employment, labour markets and access to digital services are core examples of such sectors where the evolution and growing need for digital services provide increasing opportunities for discrimination. This analysis reviews the evolution of the non-discrimination principle in the European Union, identifies the main digital

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phenomena where the risk of discrimination can arise and highlights recent regulatory and policy developments at the European and national levels.

2. Historical Context of Non-Discrimination

Legal protection against discrimination was first established Europe-wide by the Rome Treaty in 1957, which mandated equal pay for men and women. During the 1970s, directives on gender equality in the workplace laid the foundation for further developments in equality law. Landmark rulings by the European Court of Justice expanded the scope of discrimination law by interpreting concepts such as "pay" broadly and introducing "indirect discrimination" (e.g. differential treatment of full-time and part-time workers affecting women disproportionately). The 1999 Amsterdam Treaty extended protection to additional grounds — including racial or ethnic origin, religion, disability, age and sexual orientation — leading to legislation covering housing, healthcare and education. Central to the current framework are the Race Equality Directive, the Framework Equality Directive and the 2004 and 2006 Gender Equality Directives. Primary law provisions are drawn from the Treaty on the European Union, the Treaty on the Functioning of the EU and the Charter of Fundamental Rights of the EU (Weerts et al., 2023).

The principle of equality, first articulated in the Declaration of Human Rights of 1789, reappeared after the Second World War in the 1955 European Convention on Human Rights, the International Covenant on Civil and Political Rights and, more recently, the 2000 European Charter of Fundamental Rights. Anti-discrimination policy emerged internationally during the 1950s from two separate sources: the US Civil Rights Movement, which sought to end racial repression, and Swedish social democracy, which regarded gender inequality as unacceptable. Although both approaches initially aimed to achieve formal rather than substantive equality, local variations were substantial. Italy focused specifically on equality for workers, rather than for citizens, while Greece enforced a "gender-neutral" principle until 1985. Across much of Europe, anti-discrimination measures arrived comparatively late: Spain (1978), Netherlands (1975), the UK (1970, 1975) and, especially, Germany and France (Baldwin-Edwards, 2006).

3. The Legal Framework in the EU

The European Union's (EU) legal framework against discrimination originates from the 1957 Rome Treaty, which established the principle of equal pay for men and women. A series of directives adopted in 1975 and 1976 on workplace equality furnished the Court of Justice with a basis for developing the law further. The scope of non-discrimination law was subsequently extended to encompass new subject matters and concepts, including the notion of indirect discrimination, where differential treatment places certain groups—such as part-time workers—at a disadvantage. The 1999 Amsterdam Treaty widened the array of protected grounds to include racial or ethnic origin, religion, disability, age, and sexual orientation (Weerts et al., 2023). Today, EU non-discrimination law comprises four main directives supplemented by provisions in the Treaty on the European Union, the Treaty on the Functioning of the EU, and the Charter of Fundamental Rights.

3.1. EU Treaties and non-discrimination

The European Union's commitment to non-discrimination derives from Treaty-based provisions and the Charter of Fundamental Rights (Howard, 2007). To understand the regulatory framework, it is first necessary to analyse Article 19 of the TFEU and Article 21 of the Charter, which provide quintessential examples of the particular policy instruments adopted by the EU to avoid discrimination in the sector of personal data processing.

Article 19 represents a major source of the EU's anti-discrimination legislation and establishes the Treaty foundation for the adoption of the recently adopted GDPR provisions while avoiding personal data processing regulation generally within the scope of the mentioned Treaty provisions due to the existence of a particular Data Protection policy instrument.

3.2. The Charter of Fundamental Rights

In line with the EU constitutional framework, the section on non-discrimination is maintained by the EU Charter of Fundamental Rights.

While the principle of non-discrimination is a general principle of the Union, the Charter gives it explicit expression under its Article 21. Indeed, the Charter, which is generally addressed towards the EU institutions, inter alia, the European Court of Human Rights and Union institutions can invoke the Charter as a source of law. It also binds the member States for actions conducted within the scope of Union law pursuant to Article 51(1) of the Charter. Furthermore, providing the guarantees of non-discrimination it is important to note that, under Article 52, the limits on the exercise of the rights and freedoms recognised by the Charter must be provided by law, must respect the essence of those rights and freedoms, and are subject to the principle of proportionality.

Article 21 prohibits any discrimination on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Looking deeper at the relationship between Charter Article 21 and different grounds of discrimination, it is important to note that although the Nondiscrimination Directive listed the grounds to be covered by EU non-discrimination laws and policies, it did not make an explicit link between these grounds (i.e. racism, ethnicity and religion) and the full set of fundamental rights of the EU. Charter Article 21 establishes this link clearly; it prohibits discrimination on a much wider grounds basis than is covered by the Directive and applies to a broader range of activities and fields beyond employment and occupation.

By virtue of Article 21, therefore, the EU's fundamental rights guarantee of non-discrimination adorns not only Union institutions but also member State action within the scope of Union law. Beyond the non-discrimination agenda, those who are vulnerable to discrimination, such as migrants and minorities, are also protected through other fundamental rights in the Charter. These rights cover the citizen's dignity, the right to asylum, the integration of persons with disabilities, the right to private and family life and the rights and interests of the child.

3.3. Equality Directives

The equality directives mark a critical step towards the construction of a Community framework that ensures respect for the principle of equal treatment, a fundamental right embedded within the European Union. Council Directive 2000/43/EC implements the principle of equal treatment between persons irrespective of racial or ethnic origin, while Council Directive 2000/78/EC lays down a general framework for equal treatment in employment and occupation. These directives address the societal challenges that discrimination continues to pose, instituting legal commitments that public authorities in the Member States must uphold. The 1957 EC Treaty contained a provision on equal pay between men and women, now enshrined in Article 157 of the Treaty on the Functioning of the European Union (TFEU). The first directive against sex discrimination, Directive 76/207/EEC, has been recast by Directive 2006/54/EC, and for the field of goods and services, sex-discrimination is prohibited by Directive 2004/113/EC.

Pursuant to these equality directives, the Court has clarified distinctions among various forms of discrimination and related concepts. Discrimination means either treating a person less favourably than another is or would be treated in a comparable situation or applying a provision, criterion, or practice which, although apparently neutral, is likely to place persons from a particular racial or ethnic origin at a particular disadvantage unless that provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Howard, 2018). Harassment consists of unwanted conduct related to racial or ethnic origin with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating, or offensive environment. As an example, in C-13/05 Chacon Navas, the Court found that the term "disability" may include a condition of chronic alcoholism and that such a person could be protected against dismissal. Signature forms of discrimination that warrant aggravation of penalties include victimization (the infliction of a detriment on a person for having invoked or sought to enforce his rights under the Directive) and instruction to discriminate (directing or encouraging others to discriminate).

3.4. The Romanian framework

Romania benefits from extensive legislation in the field of discrimination, starting with the Romanian Constitution, which in Article 16 provides for the equality of citizens before the law and public authorities without any discrimination or privileges, and Article 30 (freedom of expression) prohibits incitement to discrimination, which is also reiterated in Article 44 (right to private property) regarding the prohibition of nationalization or any other measures of forced transfer of property to public ownership based on discriminatory criteria.

The Civil Code reiterates equality before civil law, and the Criminal Code criminalizes incitement to hatred or discrimination in Article 369. More recently, the Administrative Code also enshrines the principle of equality in Article 7 and the right to equal treatment in Article 413, and raises the idea of non-discrimination in Article 447 (conduct in relations with citizens), Article 449 (objectivity and responsibility in decision-making), Article 467 (competition for public office).

Furthermore, special legislation such as Law No. 202 of April 19, 2002, on equal opportunities and treatment between women and men (republished) and Government

Ordinance No. 137/2000 on the prevention and punishment of all forms of discrimination (republished) defines the concept of discrimination (Article 2 of Government Ordinance No. 137/2000 rep) or classified as direct and indirect discrimination (Article 4 of Law No. 202/2002 rep). The classification of discrimination into direct and indirect discrimination is also included in the Labor Code, specifically in Article 5, which adds to this classification the concept of discrimination by association.

Obviously, there are special laws prohibiting discrimination in various sectors such as health, social assistance, national education, public procurement, broadcasting, free access to information of public interest, protection and promotion of the rights of persons with disabilities, unemployment insurance, and employment promotion.

4. Discrimination in Digital Spaces

The new Digital Age, a period characterised by rapid and constant innovation, an urgent need for development, as well as, new technologies, tools and business models, has become a defining characteristic of our lives.

In this scenario, the challenges of managing innovation, digitisation and new technology have been placed centre stage by the European institutions as one of the priorities in the development of the Union. The objective is clearly to take advantage of the opportunities that the new technologies bring for all Europeans and for society as a whole, while also reducing the associated risks.

Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 13, 2024, on AI aims to ensure that artificial intelligence (AI) systems are developed and used responsibly. The law addresses risks linked to AI, such as bias, discrimination and accountability gaps, promotes innovation and encourages the uptake of AI. Within this regulation, non-discrimination is viewed from two perspectives, namely: the rules established by this Regulation should apply to providers of AI systems in a non-discriminatory manner, irrespective of whether they are established within the Union or in a third country, and to deployers of AI systems established within the Union; From the point of view of beneficiaries/recipients, practices that contravene the right to non-discrimination are prohibited.

However, there are still a number of risks associated with the use of artificial intelligence systems that may affect the right to non-discrimination, even though the aforementioned regulation considers that this should not happen.

4.1. Cyberbullying and online harassment

Digitalization and Information Communication Technologies (ICT) offer numerous benefits yet exacerbate inequalities such as cyberbullying and online discrimination. The misuse of fast digital information puts vulnerable groups and especially minors at great risk (Athanasiou et al., 2018).

Cyberbullying refers to sending or posting harmful, cruel, rude, and threatening content using digital means, while online harassment refers to a broader form of deliberate, repeated, and hostile behavior by individuals or groups, such as harassment, threats, embarrassment, or humiliation, via electronic communications. Victims often experience lasting emotional distress and social problems; many countries have established laws, remedies, and helplines for assistance. To counter cyberbullying,

automated techniques have been developed to detect, classify, and prevent the proliferation of such content.

4.2. The Digital Divide and Access Issues

The digital divide refers to the gap between individuals who have access to digital resources such as the internet and digital devices, and those who do not – hence creating a disparity between the "information rich" and the "information poor" (Kos-Łabędowicz, 2017). The problem of the digital divide particularly affects rural areas, even in highly developed countries such as the United States, Japan, and the European Union. Geographic barriers including distance, remoteness, and high population dispersion hinder the effective implementation of ICT policies in such areas. Moreover, the aging rural population leads to depopulation and low digital skills among the older generation, reducing their ability to benefit from ICT opportunities. Addressing limitations in infrastructure quality and improving digital literacy are essential to enable rural communities to access digital resources. Ensuring adequate access and skills is crucial for economic productivity and competitiveness, as widespread lack of qualifications has far-reaching effects across the entire economic system.

In addition, digitization offers significant potential to democratise culture and make it more accessible to vulnerable groups, as cultural events are no longer tied to a particular physical space or time (Higgins et al., 2022). Despite these opportunities, many individuals remain excluded from digital tools primarily due to poverty or discomfort with technology. Digital inequality affects vulnerable citizens lacking sufficient access to equipment and information, thereby hindering their ability to engage with digital culture and access digital administration. Problems of poor digital connectivity and insufficient relevant skills — encompassing knowledge and training on how to access digital cultural resources — persist. For certain communities such as Travellers, the absence of an email address impedes access to digital cultural goods. Moreover, poor digital literacy continues to represent a substantial barrier, particularly for persons with disabilities, who also face concerns around privacy and reliance on others to use digital services. Vulnerability can compound these harms and intensify challenges, as marginalised groups including migrants, ethnic minorities, and persons with disabilities frequently encounter discrimination, paternalism, and victimisation.

4.3. Algorithmic Bias

AI systems can be influenced by inherent biases. Several studies show that automated decision-making systems encode and amplify the biases that are pervasive in the data used to train them. Systems such as facial recognition tools developed by well-known technology companies perform better for lighter-skinned men and exhibit worse performance for darker-skinned women (Weerts et al., 2023). It should be noted that even now, the prohibition in the Artificial Intelligence Regulation on biometric classification systems does not apply to sorting images based on hair color or eye color, which can be used, for example, in law enforcement.

AI systems that assign scores to individuals can generate discriminatory results, as individuals should be judged on their actual behavior rather than on behavior predicted

by AI. Artificial intelligence systems can also discriminate based on protected characteristics such as ethnicity. Yet the General Data Protection Regulation (GDPR) generally prohibits organisations from using special categories of data (e.g., ethnicity, religion, disability, age or gender) to "debias" systems unless legislators adopt a new exception for this purpose (van Bekkum and Zuiderveen Borgesius, 2022). Emerging technologies—such as machine learning and artificial intelligence—raise novel ethical challenges because they are both socially and politically transformative. Some technologies, such as contact-tracing apps, have direct biopolitical effects; others influence the distribution of opportunities in society, potentially exacerbating existing inequalities. It therefore seems that a careful ethics-by-design approach should be incorporated into the development of such systems. Moreover, instead of relying on abstract values such as "transparency" and "fairness," it is generally more useful to consider the underlying concepts—such as how interventions may impact well-being, equality, or democracy. Understanding these concepts can help design more effective approaches to safeguarding ethical-guarantees in technological development. The European data-protection framework is well suited to this task, since it implements such fundamental-concepts and provides mechanisms for their enforcement.

5. Conclusion

The challenge ahead is to guarantee a uniform level of protection against discrimination for people irrespective of racial or ethnic origin, religion, beliefs, disability, age, or sexual orientation. The emphasis now lies on the effective enforcement of the anti-discrimination Directives, encompassing not only legislation but also practical application, societal attitudes, and everyday experiences. All Member States have implemented measures to combat discrimination, typically embedded within constitutional and legal frameworks, and frequently supplemented by policy measures. Nonetheless, these interventions remain inadequate, as victims seldom resort to legal proceedings out of apprehension about proving their cases, skepticism regarding the fairness of outcomes, or insufficient awareness. Despite these difficulties, there is a renewed determination throughout the EU to advance the fight against discrimination (Commission, 2004).

Speculation about future developments is always delicate, yet the likelihood that the problem of algorithmic discrimination will continue to raise attention is high.

Digital technologies are also key enablers of the right to education. Many problems can be resolved by raising awareness of the advantages of digital technologies. Education in digital literacy, in particular, is the basis for social inclusion and freedom of information and communication.

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THE NON-DISCRIMINATION PRINCIPLE AS A GENERAL PRINCIPLE OF THE EU LAW IN THE DIGITAL AGE

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Abstract: *The paper explores the application of the principle of non-discrimination, as a general principle of the EU legal order within the evolving topic of digital rights, with a particular focus on access to effective judicial protection for the users. The principle of non-discrimination, as a horizontal tool, should guide the interpretation and application of EU law. As it happened during the past decades for rights of works and equal opportunities gender related, the principle could be used in the field of digital regulation, particularly in securing procedural rights and effective remedies under Article 47 of the Charter.*

Key words: *General Principle, Judicial Remedies, EU Law, Digital Rights*

1. Introduction

The digital transformation has profoundly reshaped the society with a great impact on the fundamental rights of individuals. Rights which were not specifically articulated in the Constitution-Charter of the Member States or any other source at the apical structure. Today digital platforms become increasingly important for ensuring social engagement, economic activities, access to information generally and for the most part citizenship rights. Clearly, this technological change affected in both monetary and legal terms: all the way, innovation and efficiency, came with new kinds of inequality, exclusion, and uncertain assessment because the algorithm kept behind the scenes during the decision (Balkin, J. M. (2018). Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation. *U.C.D. Law Review, 51*, 1149). This paper seeks to examine the implications of the digital transformation for the general principle of non-discrimination affecting the European legal order. The particular principle of non-discrimination — which can be found in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union (CFR) and is also regarded as a pillar of the EU legal order by the Court of Justice of the European Union (CJEU) — needs to be reformed and reinterpreted to guarantee that it continues to protect equality and justice in the current digital era (Bassini M. (2019). Fundamental rights and private enforcement in the digital

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age. *European Law Journal: Review of European Law in Context, 25*(2), 182-197). The CJEU has recourses to the general principles of EU law in early cases in the 1950's, where the Court has referred to the non-discrimination principle and the proportionality principle to limit the restrictive effects of market regulation measures in terms of economic freedom (Judgment 17 December 1959, C-14/59, *Pont-à-Mousson v. Haute autorité*). It is however important to note that, without limitation, even if the application of the principle is closely connected to the nationality, the principle of non-discrimination, as refined further by the EU case law, has not only been found in concrete grounds as sex, age, nationality, and so on. This is, as we shall see in the course of time, now a horizontal element, a means of interpretation and, in practice, applicable to various subjects. Its nature is structural to all EU norms and provides a constitutional guarantee contained in the EU's rule of law framework and the protection of individual rights. Based on the Treaty since the Union was founded (Art. 7 EEC - currently Art. 18 TFEU), case law of the Court of Justice, as established by Prof. T. Tridimas in "The General Principles of EU Law", brought it up to serve as a cornerstone in the legal order of the European Union. Since it was clearly established within the economic sphere and the construction of the common market, the Court has progressively acknowledged equality of treatment as not just a sectoral rule, for instance in relation to the freedom of worker movement or gender equality, but as an overall interpretative criterion regulating the conduct of the EU institutions, Member States and all other actors in the EU market. The CJEU has unambiguously held from the *Mangold* case (C-144/04) and the *Kücükdeveci* case (C-555/07) that the prohibition of discrimination is a general principle of EU law, one that can produce direct effects and bind both Member States and private actors alike when implementing EU law (Judgment 22 November 2005, case C-144/04, par. 75: "*The principle of non-discrimination on grounds of age must thus be regarded as a general principle of Community law*"). European jurisprudence has progressively raised the principle of prevention from a sectoral rule to a standard of the constitution and is at the very heart of coherence and legitimacy of the EU legal order. However, the digital era has put testable constraints upon this principle to conform to new circumstances (Bradford A. (2024), The False Choice Between Digital Regulation and Innovation, retrieved from https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=5567&context=faculty_scholarship). With these new technologies and economic shifts, this will require a rethinking of traditional conceptions of equality, and how the principle of non-discrimination can and will be applied. This article explains that the broader principle of non-discrimination is a critical tool for this translation in both the conceptual as well as the practical levels. The principle would therefore also serve to guide legislative and judicial action while the digital markets are being regulating, and to protect individuals particularly in relation to their digital rights. Finally, the principle is also a bridge between substantive equality — in which individuals are not unfairly regarded or alienated using algorithmic — and procedural justice, established by Art. 47 of the Charter. A consistent application of the principle of non-discrimination at the level of digital regulation (from the GDPR to DSA to the DMA to the AI Act, and beyond) will go a long way to ensuring that technological innovation is in line with the founding values and principles of fundamental rights of the EU (Lenaerts K. (1999). L'égalité de traitement en droit

communautaire, un principe unique aux apparences multiples, in *Cahier du droit européen, 3*, 3).

2. The Principle of Non-Discrimination in the EU Legal Order

The notion of equality – a dynamic concept – has always been closely related to the one of justice, developed by philosophers like Rousseau and contained in the Declaration of Independence of the United States in 1776. The transformation of the prohibition of discrimination from a specific legal rule into a general principle was driven by the CJEU through an extensive jurisprudential process which led to the protection of fundamental rights. Such evolution demonstrates how the European legal order progressively internalized equality as a guiding value of the European integration, extending its scope from the economic sphere of the internal market to the full spectrum of fundamental rights. As mentioned, European law protects not only formal but also substantive equality. The general principles of EU law have constitutional status, and a common characteristic is that they have been derived from the laws of the Member States and their common constitutional traditions, even if it is not fully clear what those common constitutional traditions are considering the very different types of Constitutions present in the EU. The most relevant development in the past 20 years has surely been the expansion of the application of the protection of fundamental rights. This element had a strong impact on the standard of scrutiny applied by the CJEU and on the ones that, hopefully, the higher Court in the EU legal order will also apply to the technological innovations which are analysed in this paper. Article 18 of the TFEU by prohibiting "*any discrimination on grounds of nationality*" within the scope of application of the Treaties increases the visibility of the equality principle as a political aspirational value and provides the legal basis for the Union to take actions against discrimination. Under Art. 18 TFEU the Council may adopt legislation applicable to Union citizens as well as to non-European Union citizens thereby raising the general standard of protection worldwide. On the basis of Art. 18 TFEU two very important pieces of secondary legislation have been adopted by the Union: the Directive 2000/43 imposing equal treatment for persons disregarding the racial or ethnic origin (Race Directive) and the Directive 2000/78 establishing a general framework for equal treatment at work. The scope of those directives was quite large in order to prohibits discrimination in the social sphere. With the entry into force of the CFR as a binding source of law, the norm benefitted from an extensive interpretation through which equality acquired an explicitly constitutional dimension. Article 20 CFR declares that "*everyone is equal before the law*," while Article 21 prohibits discrimination on a wide range of grounds, including sex, race, ethnic origin, religion, age, and sexual orientation. Importantly, Article 21(1) CFR adopts an open-ended clause - *such as* - allowing the Court of Justice to be able to extend the protection beyond the listed categories. Moreover, Art. 22 CFR protects linguistic diversity, Art. 23 guarantees equality between man and women, Art. 24 safeguards the rights of the child and, finally, Art. 26 concerns the rights of persons with disabilities. The extensive case law of the ECtHR also contributed to establishing the general right to equal treatment. The elevation of this right to a general principle of law is largely the result of judicial construction by the European judges. Through its case law,

the CJEU has progressively transformed non-discrimination from a rule applicable to specific policies, such as equal pay under Article 157 TFEU, into a structural element of the EU's identity and values. A relevant point occurred in the *Mangold* case (C-144/04), where the Court recognized that the prohibition of age discrimination is a general principle of EU law that has direct effect even in the absence of specific secondary legislation. The Court stated that this principle arose from the common constitutional traditions of the Member States and, consequently, should have been considered binding for all national authorities. This reasoning was also reaffirmed in the *Kücükdeveci* case (C-555/07), where the Court clarified that national courts must disapply any provision of domestic law contrary to the general principle of non-discrimination, even in horizontal relationships between private parties. These two judgments were particularly significant because they extended the applications of general principles beyond vertical relations between individuals and the State, and also confirmed that the equality and the non-discrimination principles enjoy a significant constitutional autonomy, capable of shaping the interpretation of both primary and secondary EU law. In this sense, non-discrimination functions not only as a right of individuals, but also as a structural principle ensuring the coherence and legitimacy of the Union's legal system. Subsequent jurisprudence consolidated this approach, namely the *Test-Achats* case (C-236/09) and the *Dansk Industri* case (C-441/14). Indeed, the principle evolved into a constitutional benchmark for assessing the proportionality and legitimacy of public measures which create a double standard differentiation between categories of individuals. Finally, even if the prohibition of discrimination primarily concerns substantive equality, however it is intrinsically linked to procedural justice and access to legal remedies as ensured by Art. 47 of the CFR. The interplay between Articles 21 and 47 of the Charter thus anchors equality not only in substance, but also in court.

3. Digital Transformation and Emerging Inequalities

Through network effects, economies of scale and data accumulation, only a handful of platforms — gatekeepers under Regulation 2022/1925 (DMA) — get to set the terms on which users can participate in digital ecosystems. And this concentration of power has implications for equality. The un-transparent terms of service of a dominant platform determine access to these essential online infrastructures, thus exposing the system to the risk of discriminatory exclusion. With little accountability or awareness of the ability of the users to contest effectively, users can be de-prioritized, delisted, or suspended through automated systems. This principle of non-discrimination in this case, calls not only for the abolishment of unfair or unjust disparate treatment, but for these structural protectors to create structures of equitable availability of digital infrastructures, and for due process in the administration of platform rules. Algorithmic systems are being put to use where algorithms automate the decisions that determine individuals' rights and interests, such as credit scoring, job placement or the processing of data. An additional layer of newly emerged inequality relates to access and control of data. In the digital economy, data is the raw material and the origin of market power. Big platforms collect copious amounts of information that allow them to optimize algorithms, customize

services, and remain competitive. Individuals, on the other hand, have no access to, experience with or ability to use their data in any meaningful way. That asymmetry of data carries implications about equality and non-discrimination, which typically happen in consumer law. It is likely that the traditional understandings of equality based on explicit differential treatment of identifiable groups, is unsuitable for the digital world depicted above. What is required now is a broader understanding of digital equality, based on the fundamental principle of non-discrimination but adapted to the structural realities of data-driven governance. Digital equality is substantive as well as procedural: It requires equal access to digital infrastructures, safeguards against algorithmic bias, and effective opportunities for redress. In the years ahead, it is clear that we will need not only a broad interpretation of the general principles, particularly of the non-discrimination one, but also a coherent EU normative framework. Perhaps this may require the adoption of a new Charter on the digital rights of individuals—a similar future model to that developed and implemented by the CFR.

4. Extending the Applications of the General Principle of Non-Discrimination to Digital Rights

The intrinsic flexibility of the general principle makes them the perfect interpretative tool to dynamically address the new forms of inequality, guiding the application of EU law in the complex regulatory field of digital governance. As the Union increasingly legislates to structure the digital economy and protect users' rights, the general principle of non-discrimination provides both a constitutional compass and a corrective mechanism, ensuring that technological innovation remains aligned with the founding values of the Union as listed in Art. 2 TEU. General principles serve as structural norms in the EU legal order, ensuring coherence across different legislative instruments and safeguarding the identity of the Union. Their role of constitutionalizing function becomes particularly significant in this fields characterized by rapid change and technological complexity in which the framework designed by the legislation is incomplete and fragmented. The fragmented body of EU digital regulation — composed by GDPR, the DSA, the DMA and the AI Act) — is in great need to find a necessary coordination with the *aquis communautaire* and conventional norms like for example abuse of dominant position (Art. 102 TFEU), through a coherent interpretation by the European courts.

The GDPR has some norms within the logic of non-discrimination: Article 5(1)(a) establishes the principle of fairness in data processing and Article 22 confers the right not to be subject to a decision based solely on automated processing. Recital 71 explicitly warns against discrimination based on sensitive data or factors such as race, religion, or political opinion. However, these provisions require interpretative reinforcement. Indeed, the concept of "fairness" in data processing remains largely vague and indeterminate. A possible first example of such an approach would be the *IAB Europe* case (C-604/22). Even if the judgment does not lay out the equality principle, one can be skeptical that such processing of large quantities of data hinders the proper exercise of users' rights. The DSA's obligations for transparency and due-process have clear implications for procedural equality, even without any explicit reference to it. The reason of the DMA is that access

to the markets needs to be done equally. Finally, the AI Act mentions "bias mitigation" and "training data quality," but does not adequately articulate equality. Thus, this body of secondary legislation, which accounts for the user's rights in a multi-layered architecture, requires that these principles be read, interpreted and applied in a manner consistent with the general principles.

5. Conclusions

Considering the general principles of EU as founding cornerstones of the EU legal order, considering in particular the principle of non-discrimination as one which incorporates the EU values stated in the Treaty since the early stage of the European integration, and, last but not least, considering the fragmentation of the legislative framework applicable to the digital sector, it is possible to humbly suggest two key points for actions: a systemic approach to the interpretation of the norms through the use of the general principle and the adoption by the Union of a Digital Rights Charter. These two elements could support the efforts of the Union regarding its so called digital sovereignty strategy, both in the ascending phase of the creation of the norms as well as in the descending phase of their application (Moscianese, 2024). Concorrenza e regolamentazione nei mercati digitali, Torino, Giappichelli). The Charter could serve as an interpretative codification of existing principles to enhance clarity and visibility, reaffirming that equality, transparency, and accountability are not policy aspirations but binding imperatives founded in EU values and expressed through written norms. It could also consolidate the role of the general principle of non-discrimination as a structural axis connecting diverse regulatory regimes. The systemic approach, eventually driven by the CJEU, could reinforce the cooperation between national and European judges. It is of utmost importance that equality principles be integrated into digital regulation to ensure continuity with the Union's legal tradition, reaffirming that technological progress must unfold within the framework of EU values and judicial effectiveness, and empowering national and EU courts to interpret digital rights consistently.

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PERSONHOOD, CRIMES AND CRIMINAL LIABILITY IN THE AGE OF ARTIFICIAL INTELLIGENCE

David SCHULTZ[1]

Abstract: *This article examines how artificial intelligence (AI) challenges and transforms domestic and international criminal law. Traditional doctrines of liability, rooted in human intent and voluntary action, are destabilized by autonomous systems that can act independently of direct human control. The paper identifies thirteen emerging areas where AI creates new crimes or reshapes existing ones, including deepfakes, automated fraud, algorithmic discrimination, cyberattacks, and election manipulation. It also explores unresolved issues such as AI personhood, distributed liability, and accountability in health care, space, and warfare. The analysis underscores the urgent need for legal adaptation to ensure fairness, responsibility, and deterrence.*

Key words: *artificial intelligence, criminal liability, international law, emerging crimes, personhood.*

1. Introduction

Artificial intelligence (AI) is rapidly altering the foundations of modern society, from commerce and communication to healthcare and national security. As AI becomes more sophisticated and autonomous, its impact on law—particularly criminal law—is profound. This is true whether one looks at domestic or international law. Traditional doctrines of criminal liability rest on the assumption of human actors who possess intent, act voluntarily, and can be held accountable. AI challenges each of these assumptions.

This article explores how AI transforms both domestic and international criminal law by focusing on emerging crimes, shifting liability, and the disruption of fundamental doctrines such as intent, culpability, and responsibility. The article presents several examples of crimes to illustrate how AI forces us to rethink criminal law, ranging from deepfake offenses and automated fraud to election manipulation and crimes in space. Collectively, these examples highlight the urgent need for adapting legal systems to preserve fairness, responsibility, and deterrence in an era of autonomous decision-making.

What is important to the thesis here are two points. The first is that AI will alter or challenge existing notions or concepts regarding crime. The second is that AI may well

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generate new types of crimes hitherto that did not exist. Both of these points need to be considered along with how agency will be affected by AI.

2. Attribution of Criminal Intent in Autonomous Systems

One of the most pressing challenges that AI poses is the attribution of criminal intent, or *mens rea*. As is the case in most states in the world there are two basic components to crime—actus reus and mens rea. To prove that a person is guilty of a crime, the government has to show that the person committed an act proscribed by law, such as the taking of a human life or the acquisition of someone else's property without their permission. One then also has to show that the act was committed with the requisite mental state.

Criminal law has long relied on the idea that culpability requires both a guilty mind and a guilty act. Yet autonomous AI systems operate without consciousness or human intention. If a self-driving car runs a red light and kills a pedestrian, who bears the guilty mind? Developers, deployers, and end-users may all be implicated, but none may have intended the outcome.

Courts may eventually need to reconceptualize intent by treating AI as an "agent" of human actors, or by extending strict liability frameworks to developers and corporations (Pagallo, 2017; Hallevy 2010). Such changes would mark a significant departure from the principle that liability attaches to voluntary human choice.

Conversely, the law might need to consider the role of the AI developer or programmer when assessing criminal liability. In this regard, should the AI developer who created the program or set its default choices be held criminally liable as a an accessory or co-conspirator for crimes generated through the use of artificial intelligence?

3. Jurisdiction and Location of the Crime

Imagine that an AI generated crime takes place involving a US citizen who is physically located in Romania. He hacks into a computer Bulgaria and then uses that computer to commit a crime – such as extortion – against an Italian citizen vacationing in Malta.

Where was the crime committed? Who or what state has jurisdiction for the prosecution of the crime? Under traditional concepts of international law, the country where the crime was committed has jurisdiction over the matter, subjecting to the domestic substantive and procedural criminal law. In the case of crimes that occur in international territory such as on the high seas, rules such as where the ships were flagged or the nationality of the defendants or the victims may be important.

AI complicates these rules, as the example above points out. In this example, the question becomes: where was the crime committed? There are numerous possible answers to that question. When the crimes involve AI and take place in cyberspace, perhaps we need to view cyberspace similarly to both the high seas as well as to domestic law, allowing the factors that influence jurisdiction in both to apply (Richmond 2020).

4. Existing and Emerging Crimes with AI

Crime is not new. It has existed ever since laws proscribed certain conduct. But new technologies create new opportunities to commit existing crimes, as well as the potential to commit new ones. This section simply provides a brief overview on how AI is transforming existing illegal behavior while also opening up new possibilities both domestically and in the field of international law.

4.1. Deep fake and synthetic Media crimes

AI-generated deepfakes create an entire category of novel offenses. These include identity fraud, impersonation of political leaders, falsified evidence in legal proceedings, and non-consensual pornography. Deepfakes are especially dangerous because they undermine trust in digital content and blur the line between authentic and fabricated communication.

From a criminal law perspective, deepfakes complicate issues of evidence and proof. If a criminal defendant presents falsified AI-generated evidence, courts face unprecedented challenges in determining authenticity. Internationally, deepfakes may be used to interfere in elections, destabilize governments, or incite violence, raising the possibility of transnational regulation (Chesney & Citron, 2019).

4.2. Algorithmic discrimination and rights violations

AI tools are increasingly used in the administration of justice, including sentencing, parole decisions, and risk assessments. Yet algorithms often replicate existing social biases, producing outcomes that disproportionately target racial minorities or marginalized groups. When such outcomes occur, the question becomes whether developers, agencies, or the state itself bear criminal liability for discriminatory harms.

Domestically, this may trigger liability under civil rights statutes or due process protections. Internationally, systemic algorithmic discrimination may constitute violations of human rights law, particularly under treaties prohibiting racial discrimination or arbitrary detention. Scholars argue that accountability should extend to developers and agencies that recklessly deploy biased systems (Angwin et al., 2016).

4.3. Automated fraud and machine-executed crimes

Fraud is one of the oldest categories of criminal conduct, yet AI transforms how it is executed. AI systems can autonomously generate phishing emails, create synthetic identities, or manipulate financial markets without direct human input. Unlike traditional fraud, where human perpetrators intentionally deceive victims, AI may carry out fraud-like activity as part of its programmed optimization.

This development disrupts fraud statutes that assume human actors. Should the law treat machine-initiated fraud as a crime even when no person directly issued the deceptive message? Policymakers may need to redefine fraud to cover “machine-

executed deception," with liability falling on those who created, trained, or deployed the algorithm (King et al., 2020).

4.4. Negligent AI Development as Criminal Liability

Just as product designers may face criminal charges for creating defective or dangerous goods, AI developers may one day be held criminally responsible for negligent design. If an AI medical diagnostic tool systematically misdiagnoses diseases and patients die as a result, its creators could face charges of criminal negligence or even involuntary manslaughter.

This extension of the negligence doctrine requires courts to treat software engineering failures as breaches of legal duty. Criminal law may need to establish standards for testing, auditing, and securing AI before deployment (Hubbard, 2020). On the international level, negligent deployment of AI medical or security systems could cross borders, raising questions of liability under international criminal or tort frameworks.

4.5. Cybercrime and autonomous attack systems

AI-powered cyberattacks pose a major challenge to traditional cybercrime statutes. Unlike conventional hacking, which requires ongoing human input, autonomous malware and attack systems can operate independently, breaching networks, stealing data, or disrupting infrastructure. This independence complicates conspiracy and accomplice liability doctrines, since the crime unfolds without continuous human involvement.

Internationally, autonomous AI attacks may blur the boundary between cybercrime and cyber warfare. If an AI system disables a foreign power's infrastructure, does this constitute a private crime, a state-sponsored act of aggression, or both? Instruments such as the Tallinn Manual suggest that new international frameworks may be needed to clarify attribution in autonomous cyber conflicts (Schmitt, 2017).

4.6. Crimes against humanity via AI at scale

AI also raises the possibility of crimes against humanity. Autonomous weapons systems may be programmed to identify and kill members of ethnic or religious groups, or predictive policing AI may be deployed to suppress political dissidents *en masse*. These uses create the possibility of genocide or mass repression carried out partly by machines.

International criminal law rests on principles of command responsibility, whereby leaders are liable for the acts of their subordinates. If AI systems carry out atrocities without direct human commands, responsibility may be obscured. Scholars warn that international law must adapt to ensure accountability even when atrocities are executed by autonomous systems (Crootof, 2019).

But consider also two other issues when it comes to international law—genocide and use of aggression.

The Convention on the Prevention and Punishment of the Crime of Genocide (commonly called the Genocide Convention), adopted by the United Nations General Assembly in 1948, provides the authoritative legal definition of genocide in Article II. It defines genocide as including, in part:

> "Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> Killing members of the group;
> Causing serious bodily or mental harm to members of the group;
> Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; "

In international law, aggression is most clearly defined by the United Nations General Assembly Resolution 3314 (XXIX) of 1974 and later incorporated into the Rome Statute of the International Criminal Court (ICC). Aggression is defined as: "The use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations."

Under current concepts of international law, aggression does not appear to include cyberattacks or cyberwarfare where AI may be a tool (Lee, 2024). Similarly, one could argue that it is not clear that current concepts of genocide or crimes against humanity include the use of AI to target the harm or destruction of specific groups covered by the convention (Acquaviva, 2023). Moreover, if autonomous weapons are used either in warfare or in the commission of genocide, current conceptions of international law do not seem prepared to address these issues (Human Rights Watch, 2025; Gaeta, 2023; ICRC 2023; ICRC 2025). These new crimes need to be addressed.

4.7. New personhood and legal entity questions

A further issue concerns whether AI systems themselves could be recognized as legal entities capable of bearing criminal liability. At present, only humans and corporations, as legal fictions, can be criminally prosecuted. However, if AI systems were to develop sufficient autonomy and decision-making capacity, some argue that they could be treated as legal subjects.

Granting personhood to AI for criminal liability purposes would parallel the extension of legal status to corporations. Yet such a move risk shielding humans from accountability by shifting blame onto machines. The debate reflects larger philosophical and legal tensions about personhood in an era of intelligent machines (Solum, 1992).

4.8. Distributed liability and supply chain responsibility

Many AI-related crimes involve a network of actors: coders, data providers, vendors, platform operators, and end-users. For instance, if a text-generating AI inadvertently produces child pornography, who is culpable? Traditional criminal law requires direct causation and identifiable perpetrators. Yet AI diffuses responsibility across supply chains and ecosystems.

Domestic courts may experiment with new doctrines of collective liability, while international law may turn to principles like joint criminal enterprise. Such approaches would attribute responsibility not to a single actor but to a constellation of contributors whose actions collectively facilitated the crime (Yeung, 2018).

4.9. Retroactive criminalization and unforeseen AI harms

AI creates harms that legislatures may not foresee. Behavioral manipulation, synthetic biological threats, and large-scale misinformation campaigns are emerging forms of damage that current statutes do not address. Governments may respond by criminalizing these behaviors retroactively.

Domestically, retroactive criminalization runs into constitutional barriers such as the prohibition on ex post facto laws in the United States. Internationally, however, tribunals have sometimes recognized new crimes after the fact, as at Nuremberg where the concept of "crimes against humanity" was first articulated. AI may force a similar evolution, raising questions about fairness, legality, and the predictability of law (Bassiouni, 1999).

4.10. Liability in autonomous Medical and Health Systems

AI is transforming healthcare, from diagnostic algorithms to robotic surgery. Yet errors by autonomous systems pose difficult questions of liability. If a robotic surgeon malfunctions during an operation and a patient dies, is the liability civil (malpractice) or criminal (negligent homicide)? If the error was foreseeable and preventable, criminal negligence charges may be warranted.

The challenge multiplies in international contexts where telemedicine allows AI to cross borders. A system trained in one jurisdiction may cause harm in another, creating conflicts of law. Scholars argue that international health law must expand to incorporate accountability mechanisms for AI-driven medical harm (Price, 2020).

4.11. AI manipulation of elections as an international crime

AI tools can be deployed to manipulate democratic processes, spreading disinformation, suppressing voter turnout, or microtargeting populations with coercive propaganda. Domestically, such activities could amount to election fraud or criminal interference with voting rights. At the international level, these actions may be treated as attacks on state sovereignty, raising questions of whether election manipulation could one day be prosecuted as an international crime.

The destabilization of democratic systems by AI-driven campaigns also threatens global security. If a state sponsors AI propaganda to disrupt another country's elections, this could resemble an act of aggression under international law. Scholars suggest that recognition of election manipulation as an international offense is necessary to preserve democratic governance (Bradshaw & Howard, 2018).

4.12. AI in Space and Maritime Criminal Law

Finally, AI introduces criminal law challenges in domains such as space and maritime law. Autonomous vessels may engage in piracy or smuggling without human captains. AI-controlled satellites could disrupt communications or attack rival systems, raising liability under international treaties governing space.

These scenarios extend criminal law into new frontiers where traditional jurisdictional frameworks are already strained. Holding individuals accountable for crimes carried out by autonomous systems in international waters or outer space will require novel treaties and doctrines. Legal scholars have already begun considering how AI intersects with maritime and space law (Marchisio, 2020).

5. Conclusions

Artificial intelligence disrupts the fundamental principles of criminal law by complicating intent, expanding liability, and creating wholly new categories of crime. The examples outlined here illustrate how AI transforms both domestic and international law, ranging from deepfakes and automated fraud to genocide, election manipulation, and space-based offenses.

Each example underscores the need for legal adaptation. Legislatures must clarify liability for developers and deployers of AI, courts must refine doctrines of intent and causation, and international bodies must recognize AI-related crimes that transcend borders. Failure to adapt risks leaving serious harms unaddressed, undermining both justice and deterrence.

At its core, criminal law is about assigning responsibility and protecting society. As AI becomes more autonomous, ensuring that accountability remains meaningful is essential. The challenge is to craft legal frameworks that preserve fairness and human dignity while recognizing the unique risks posed by machine decision-making. Criminal law, once rooted in human conduct, must now evolve to confront the age of intelligent machines.

This article is certainly neither the first nor the final word on how AI is and will continue to challenge domestic and international criminal law. Its task was simply to present and catalog some of those challenges.

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THE IMPERATIVE OF PROTECTING HUMAN DIGNITY AND FUNDAMENTAL EU VALUES IN THE CONTEXT OF IMPLEMENTING ARTIFICIAL INTELLIGENCE SYSTEMS

Elise Nicoleta VÂLCU[1]

Abstract: *The final declaration of the Paris Summit for Open AI, held on February 6-11, 2025, seen as "an extension" of the Council of Europe's Framework Convention on Artificial Intelligence, emphasized on the one hand that the summit "defined an inclusive, open, and multi-stakeholder approach that will enable AI to be ethical, safe, secure, trustworthy, and focused on human rights and people", while also highlighting the urgency of ethical assessment and firm control over the impact on human rights. Therefore, this study illustrates the challenges posed by the implementation of AI systems on human dignity and, implicitly, the need for regulatory rigor at the EU and Council of Europe level to enable a response to these challenges.*

Key words: *human dignity, protection, artificial intelligence, risk assessment*

1. Introductory Aspects of Human Dignity in a "Union of Values"

Human dignity is not only a fundamental right in itself, but also the very foundation of fundamental rights. At EU level, human dignity is regulated both in primary law, in Art 1, Title I of the Charter of Fundamental Rights of the EU, where the text states that "*Human dignity is inviolable. It must be respected and protected*", as well as at the level of secondary EU law, the relevant legislative framework being Regulation (EU) 2024/1689 laying down harmonized rules on artificial intelligence, which provides that in the context of artificial intelligence, the protection of the right to human dignity needs to be reconsidered.

Also, within the EU, human dignity has been established at the jurisprudential level, such that in its judgment of October 9, 2001, in Case C-377/98, Netherlands v. European

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Parliament and Council, the Court of Justice of the European Union reaffirmed that the fundamental right to human dignity is an integral part of EU law.

At the level of the Council of Europe, references to artificial intelligence and human rights can be found in the Framework Convention adopted on May 17, 2024, also known as the first legally binding international treaty aimed at ensuring respect for human rights, the rule of law, and democratic legal standards in the use of artificial intelligence (AI) systems, which sets out human dignity and non-discrimination as fundamental principles.

The final declaration of the Paris Summit for Open AI, held on February 6-11, 2025, seen as "an extension" of the Council of Europe's Framework Convention on Artificial Intelligence, emphasized on the one hand that the summit "defined an inclusive, open, and multi-stakeholder approach that will enable AI to be ethical, safe, secure, trustworthy, and focused on human rights and people", while also highlighting the urgency of ethical assessment and firm control over the impact on human rights. Therefore, this study illustrates the challenges posed by the implementation of AI systems on human dignity and, implicitly, the need for regulatory rigor at the EU and Council of Europe level to enable a response to these challenges.

As enshrined in Article 2 of the TEU, the European Union is a "union of values", founded on respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Furthermore, in accordance with the Charter of Fundamental Rights of the European Union, the Union is founded on the indivisible and universal values of human dignity, freedom, equality and solidarity.

The Charter also reaffirms the rights which result mainly from the constitutional traditions and international obligations common to the Member States, from the European Convention for the Protection of Human Rights and Fundamental Freedoms, from the Social Charters adopted by the European Union and by the Council of Europe, and from the case-law of the Court of Justice of the European Union and the European Court of Human Rights.

In the meaning given by the provisions of the Charter, the term dignity implies "human dignity", "the right to life", "the right to the integrity of the person", "the prohibition of torture and inhuman or degrading treatment or punishment" and "the prohibition of slavery and forced labor".

In the context of digital transformations and implicitly the presence of AI systems, the European Union had to decide on how its fundamental values and rights applicable in the offline environment should be applied in the digital environment or whenever humans are within the perimeter of the AI system.

Therefore, the European Union, on behalf of its member states, adopted a series of documents relevant to the analyzed topic, including: "the Tallinn Declaration on e-Government" and "the Berlin Declaration on Digital Society and Value-Based Digital Governance", "the Lisbon Declaration - Digital Democracy with Purpose", through which it advocated for the development of a digital transformation model that would strengthen Union values.

The Union's approach culminated in the adoption on January 23, 2023 of the European Declaration on Digital Rights and Principles for the Digital Decade a complementary non-binding legal instrument, the main purpose of which was paraphrased as follows: "The Declaration ... sets out the EU's commitment to a safe, secure and sustainable digital transformation that puts people at the centre, in line with the EU's core values and fundamental rights."

As highlighted in Chapter I of the joint Declaration of Rights and Principles, it "places people at the heart of digital transformations" through which the EU commits to strengthening a digital environment that protects privacy, leading to a high level of confidentiality, integrity, availability and authenticity of the information processed.

At the same time, the declaration shows citizens that European values, as well as the rights and freedoms enshrined in the EU legal framework, must be respected online, as they are offline. ... the text will guide policy makers and companies dealing with new technologies. The declaration will also shape the EU's approach to digital transformation worldwide" (Geingerich, 2023, p.19).

Regarding the concept of dignity, the Romanian legislator establishes a broad meaning, with the addressability to both natural and legal persons. In this legal reality, the role of defining human dignity fell to the Constitutional Court of Romania, which ruled by Decision no. 1.576 of December 7, 2011, that "human dignity is an inalienable attribute of human persons"; we therefore deduce that human dignity, as enshrined in art. 1(3) of the Romanian Constitution, concerns only citizens (natural persons) (Cornu, 2007, p. 309, p. 461) being accepted in the Court's jurisprudence as a guiding principle, as a supreme value of the state (O'Mahony, 2012, pp. 560-565).

The jurisprudence of the Constitutional Court establishes the inviolability of human dignity, taking over art. 1 of the Charter of Fundamental Rights of the European Union. The primary framework of fundamental rights applicable to the use of AI in the European Union consists of the EU Charter of Fundamental Rights and the European Convention on Human Rights.

2. Special Overview of the Main EU and International Regulation for the Protection of Fundamental Rights in the Context of AI

The EU Charter of Fundamental Rights, applicable since 2009, with the same legal value as the Treaty of Lisbon itself, brings together civil, political, economic and social rights in a single text. According to Article 51(1) of the Charter, the Union institutions, bodies, offices and agencies must respect all the rights enshrined in the Charter when implementing Union law, including when applying the provisions on the regulation of AI.

Also relevant at EU level is sectoral secondary legislation, in particular Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828, as well as the acquis on privacy and data protection, non-discrimination legislation and access to

justice legislation, all of these legislative instruments contributing to guaranteeing fundamental rights in the context of AI.

Also, at the Council of Europe level, both the European Convention on Human Rights and the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, adopted on May 17, 2024, also known as the first binding international treaty (Duțu, 2024) stand out as being incidental to the analyzed topic from a legal point of view, which aims to ensure respect for human rights, the rule of law and democratic legal standards in the use of artificial intelligence (AI) systems, which enunciate human dignity and non-discrimination as fundamental principles.

About this international treaty, Marija Pejčinović, Secretary General of the Council of Europe stated: "*The Framework Convention on Artificial Intelligence is a global treaty, the first of its kind, that will guarantee that artificial intelligence respects human rights. It responds to the need for an international legal standard supported by states from different continents that share the same values to harness the benefits of artificial intelligence while reducing the risks. With this new treaty, we aim to ensure a responsible use of artificial intelligence that respects human rights, the rule of law and democracy*."

According to the United Nations Guiding Principles on Business and Human Rights (UNGPs 15 and 17), companies using AI systems, regardless of their sector of activity, must have in place "a human rights due diligence process to identify, prevent, mitigate and explain how they address their human rights impacts".

In fulfilling its commitments to the UN Guiding Principles, the EU has adopted several pieces of legislation addressing sectoral instruments, in particular in the context of human rights due diligence obligations. In this context, companies must therefore comply with relevant internationally recognised human rights law and avoid violating them through their own activities, including in the supply chain.

The report of the European Union Agency for Fundamental Rights (FRA), entitled *Getting the Future Right – Artificial Intelligence and Fundamental Rights*, provides an overview of the current use of AI-related technologies within the European Union and examines their implications for fundamental rights. The report focuses on use-case scenarios in four main areas: social benefits, predictive-analysis-based policing, healthcare services, and targeted advertising.

With regard to the protection of human rights in relation to the implications of activities carried out within the life cycle of artificial intelligence systems, the first obligation of States is to ensure that their domestic law is in accordance with their international legal obligations, in particular the obligation to respect, protect and fulfil fundamental rights. They are of course free to choose the means of implementing those duties, provided that the regulations are in accordance with them. This is an obligation of result, and in this regard the principle of subsidiarity is essential as it gives the parties the responsibility to ensure respect for human rights and to provide for remedies in the event of non-compliance (Puran, 2025).

Also, on February 5, 2024, in Krany (Slovenia), a Charter to build an ethics of AI was adopted by 8 private giants of the field (GSMA, INNIT, Lenovo Group, LG Al Research, Mastercard, Microsoft, Salesforce and Telefonica), under the auspices of UNESCO within the process initiated in 2021. The signatories commit to fully assume their role in the protection of human rights, in the design, development, purchase, sale and use of AI. The Charter provides for the establishment of procedures for verifying compliance with security rules, identifying the negative effects of the use of AI, but also the obligation to apply, within a reasonable time, limitation measures and remedy these effects in compliance with national legislation.

At the same time, "the importance of ex ante tests (before placing on the market) is emphasized and the development of ex post (after deployment) practices for assessing and mitigating risks is also called for, taking into account the rapid evolution of AI systems that are already on the market" (Duțu, 2024, 17-46).

Analyzing international norms, two major approaches to the issue of artificial intelligence are currently evident. The first approach considers the risks of using AI, focusing mainly on self-regulation and self-assessment of the development of new technologies. The second approach aims to integrate fundamental human rights into all stages of the AI life cycle (Puran, 2025).

Regarding the latter approach, we recall the UN Human Rights Council Resolution of 14 July 2023 on new and emerging digital technologies and human rights (Resolution A/HRC/RES/53/29). The Resolution recognizes the importance of new technologies, showing that they have the potential to facilitate efforts to accelerate human progress, while contributing, together with artificial intelligence systems, to the promotion, protection and exercise of human rights and fundamental freedoms, but also highlighting the risks that new and emerging technologies and AI pose with regard to fundamental rights.

Starting from the statement that "the same rights that apply offline also apply online", the Resolution emphasizes the importance of "guaranteeing, promoting and protecting human rights throughout the life cycle of artificial intelligence systems", given the obligation of states to promote respect for and protection of all human rights and fundamental freedoms for all, in accordance with international regulations in the field.

The Human Rights Council draws the attention of Member States, through the aforementioned resolution, to the need to protect individuals from harm caused by artificial intelligence systems. Protection will include ensuring the safety of artificial intelligence systems, creating methods for assessing the impact on human rights, as well as preventing and mitigating negative impacts on them, ensuring effective remedies and human oversight, and accountability in all forms, including legal liability.

On March 21, 2024, the United Nations General Assembly, in its 78th session, unanimously adopted the first global Resolution on the promotion of artificial intelligence, "safe, secure and trustworthy" to achieve the sustainable development goals set by the UN, which aim to ensure a better future for all humanity by 2030. The resolution aims to encourage the protection of personal data but also to monitor AI for risks and respect, protect and promote human rights.

3. The Need for Viable Regulations regarding the Compatibility of Artificial Intelligence Systems with Fundamental Values

The Council of Europe has demonstrated on numerous occasions its ability to initiate new standards, which later became benchmarks at international level (Pejčinović Burić, 2023).

The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law represents such an approach, being qualified in the specialized doctrine as representing "an appropriate legal instrument on the development, design and application of artificial intelligence systems based on the Council of Europe standards on human rights, democracy and the rule of law..." (Breuer, 2022). The relevant Council of Europe document therefore aims to ensure the compatibility of AI with the fundamental values promoted by the Council. In this regard, in paragraphs 3 and 4 of the Preamble to the Convention, the Council's AI Committee states that "artificial intelligence systems… have the potential to promote human prosperity, as well as individual and societal well-being, sustainable development, gender equality and the empowerment of all women… and other important objectives and interests, by stimulating progress and innovation" and recognises "that artificial intelligence systems can be designed, developed and used to offer unprecedented opportunities to protect and promote human rights and fundamental freedoms, democracy and the rule of law". To the same extent, in paragraphs 5-7 of the same preamble, the committee reaffirms its concern that the same AI systems "may undermine human dignity and individual autonomy, human rights and fundamental freedoms, democracy and the rule of law", as well as lead to discrimination and repression through surveillance and censorship. Therefore, in light of the provisions of Article 1(1) of the Convention, the treaty establishes "principles and obligations aimed at ensuring that the design, development, use and decommissioning of artificial intelligence systems are fully compatible with respect for human dignity and individual autonomy, human rights and fundamental freedoms, the functioning of democracy and respect for the rule of law". As provided for in Article 2, the Convention adopts a risk-based approach, in the sense that each Party "shall maintain and take in its domestic legal system graduated and differentiated measures, which are necessary and appropriate, taking into account the seriousness and likelihood of adverse impacts on human rights and fundamental freedoms, democracy and the rule of law during the design, development, use and decommissioning of artificial intelligence systems."

The Convention will "apply to the design, development, use and decommissioning of artificial intelligence systems that have the potential to interfere with respect for human rights and fundamental freedoms, the functioning of democracy and respect for the rule of law." It will only set minimum standards so that each Party can provide broader protection against AI-related risks, taking the necessary measures to ensure that "all activities related to the design, development, use and decommissioning of artificial intelligence systems are compatible with relevant human rights and non-discrimination obligations...". At the same time, Parties will have to adopt measures to identify, assess, prevent and mitigate potential risks and assess the need for a moratorium, ban or other

appropriate measures regarding the uses of artificial intelligence systems where their risks may be incompatible with human rights standards. They will also need to ensure accountability and responsibility for adverse effects and ensure that AI systems respect equality, including gender equality, the prohibition of discrimination and the right to privacy. In addition, parties to the treaty will need to ensure the availability of remedies for victims of human rights violations related to the use of AI systems and procedural safeguards, including notification to all individuals interacting with AI systems of the fact that they are interacting with such systems.

With regard to risks to democracy, the treaty requires parties to adopt measures to ensure that AI systems are not used in a manner that would undermine democratic institutions and processes, including the principle of separation of powers, respect for judicial independence and access to justice. It is therefore evident that the efforts of the actors directly involved in the adoption of the Council of Europe Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law are part of the concerns of the member states to find the most complete and appropriate legal response to the problem related to the fact that AI technologies open up great possibilities for humanity, but also carry major risks for the exercise of human rights, the proper functioning of democracy and respect for the requirements of the rule of law (Duțu, 2025). The aim of the Union legislator, by adopting Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence, is to promote human-centric, ethical and trustworthy artificial intelligence systems, which are fully in line with the Charter of Fundamental Rights and the values on which the European Union is founded.

At the same time, the harmonisation framework aims to ensure a high level of protection of health, safety, fundamental rights, democracy and the rule of law, as well as the environment against harmful effects, while supporting innovation. Member States, when implementing the regulation, are required to promote measures to develop a sufficient level of AI literacy, in all economic and social areas and taking into account the diversity of needs of groups of providers, implementers and affected persons, including through education and training programmes, while ensuring an appropriate gender and age balance, in order to enable democratic control of AI systems. In accordance with established international standards in the field of human rights, for example, Article 1 of the European Convention on Human Rights (ECHR) and Article 51 of the Charter, states are obliged to guarantee the rights and freedoms of individuals.

4. The Need to Ensure Effective Oversight of Artificial Intelligence Systems - A Mechanism for the Protection of Fundamental Rights

4.1. Guaranteeing Fundamental Rights

Given that the implementation of AI systems involves a wide range of fundamental rights, greater attention must be paid to guaranteeing them through effective monitoring mechanisms and, implicitly, accountability in the event of any negative impact on them.

To guarantee the protection of fundamental rights, standards and regulatory bodies are required to oversee the use of AI as well as to maintain full human control over AI, without granting it rights or privileges equal to those of humans. For example, in accordance with the United Nations Guiding Principles 15 and 17 on Business and Human Rights, companies should have "a human rights due diligence process to identify, prevent, mitigate and explain how they address their impacts on human rights". In fulfilling its commitments to the UN Guiding Principles, the European Union has adopted several sectoral pieces of legislation, in particular regarding the potential impact of business activities in their supply chain on human rights and the environment. From the perspective of businesses, impact assessments are therefore an important tool to mitigate the potential negative effect of their activities on fundamental rights.

4.2. Responsibility for the use of AI systems – A premise for the protection of Fundamental Rights

The design, development and use of artificial intelligence systems that have the potential to interfere with the respect for human rights and fundamental freedoms, the functioning of democracy and respect for the rule of law must be carried out with the utmost responsibility. There are aspects of correlation between responsibility and transparency in the sense that there must always be adequate ways to identify and pursue violations of rights and to provide appropriate remedies and reforms. At the same time, an AI system must be developed ethically, taking into account fundamental rights, in order to achieve the objective of "responsible AI", which implies an ethical decision-making process from the research and development phase, more effective consumer education, before the AI is launched and put into operation. This is supported by the Japan Society for Ethical Guidelines for AI, which believes that the development of AI systems should be carried out "in accordance with the ethics, conscience and competence of both its researchers and society as a whole. AI should contribute to the peace, safety, welfare and public interest of society, the Society states, and protect human rights." (Bird, Fox-Skelly, Jenner, Larbey, Weitkamp, Winfield, 2020, p. 56).

Also, a decisive role at the level of the Member States in ensuring respect for fundamental rights in the context of technology is played by supervisory bodies, which can operate at the level of data protection authorities, equality bodies, national human rights institutions, Ombudsman institutions and consumer protection bodies. Therefore, at the level of national bodies involved in the protection of fundamental rights, effective accountability systems are implemented, such as, for example, updating the skills of staff, specializing them with the acquisition of skills in the field of new technologies that allow them to address complex issues related to the development and use of AI.

At the same time, we consider that these bodies must have sufficient resources with skills adapted to new technologies, with adequate expertise to prevent and assess violations of fundamental rights and to support in a concrete and efficient manner those whose fundamental rights are affected by AI.

4.3. Cohabitation between Human well-being and AI systems

To protect human well-being, defined as "human satisfaction with life and living conditions, as well as an appropriate balance between positive and negative effects", it is suggested to prioritize human well-being throughout the design and use phase of the AI system. In this regard, STOA opines in the Study on the Future of Science and Technology that "AI should not only not disrupt human well-being, but should proactively encourage and support it to improve and develop".

5. Conclusions

The imperative to protect human dignity implies that when adopting new legislative acts on AI, the EU co-legislator and the Member States, acting within the scope of EU law, must ensure specific fundamental rights safeguards, designed to effectively protect against arbitrary interference with fundamental rights and to provide legal certainty to both developers and users of AI.

This theme assumed by the EU and the Member States, implies in particular that the adoption of EU legislation should be based on solid evidence of the impact of AI on fundamental rights. We believe that the impact assessment should be carried out in a manner that provides transparency and be based on criteria such as: the different scope of application of AI technologies, the level of automation and good practices established in other areas.

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APPEARANCES AND REALITIES CONCERNING THE DISCRIMINATORY NATURE OF CERTAIN PROVISIONS OF THE CITIZENSHIP LAWS

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Abstract: *The conferral of citizenship constitutes an exclusive prerogative of public authority vested in the Romanian state, exercised under the principle of national sovereignty and in pursuit of the public interest. An individual applying for citizenship does not hold a subjective right in this regard but merely a legal vocation, which is conditional upon the cumulative fulfilment of the requirements established by law. The laws regarding citizenship that will be presented enshrine this approach, integrating provisions aimed at maintaining a balance between the state's interest in determining the criteria and conditions for acquiring citizenship and the acknowledgment of historical, cultural, or social ties justifying the granting or reacquisition of citizenship.*

Key words: *citizenship, public authority, acquisition and reacquisition, legislative exceptions, legal protection.*

1. Introduction

The institution of citizenship, by its very nature, lies at the intersection between state sovereignty and the principle of equality before the law. National legislations naturally establish distinctions among various categories of individuals with respect to the acquisition of citizenship, such distinctions being generally justified by considerations of public interest, national identity, or historical redress. At times, such distinctions take the form of positive discrimination, namely preferential legal treatment granted to certain categories of persons for the purpose of safeguarding historical, ethnic, cultural, or linguistic ties with the respective state.

2. The Conceptual Framework of Positive Discrimination

In international law, positive discrimination constitutes a justified derogation from the principle of formal equality, permitted where a differential legal treatment is based on

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an objective and reasonable justification, pursues a legitimate aim, and complies with the principle of proportionality. It does not possess an arbitrary character but rather functions as an instrument for correcting de facto inequalities or for acknowledging a pre-existing legal, historical, or cultural connection between the state and the individual concerned. As established by the European Court of Human Rights in its case law ”The principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment ... must not only pursue a legitimate aim: Article 14 (art. 14) is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized” (CEDO, Case relating to certain aspects of the laws on the use of languages in education in Belgium, judgment of 23 July 1968, Series A no. 6, p. 34, para. 10). Thus, states may establish differentiated legal regimes for certain categories of citizenship applicants, such as former citizens, their descendants, or individuals belonging to the same ethnic group, without such differentiation being regarded as discriminatory. In these cases, preferential treatment represents a legitimate expression of the state’s sovereign right to determine the criteria for membership in its political community, in accordance with the principles enshrined in the European Convention on Nationality (Strasbourg, 1997), in particular Article 5 on non-discrimination and Article 6 concerning the rules on the acquisition of nationality. Therefore, positive discrimination in matters of citizenship does not constitute a form of exclusion but rather a legal acknowledgment of a historical proximity that justifies differentiated treatment based on ties of origin, language, and culture with the state.

3. The Romanian Citizenship Law

3.1. Short description

The Romanian Citizenship Law No. 21/1991 establishes the legal framework governing the acquisition, reacquisition, renunciation, and revocation of Romanian nationality, thereby defining the essential normative structure of legal membership within the Romanian state. Enacted during the nation’s transition from a totalitarian regime to a democratic order, the law firmly entrenches the jus sanguinis principle as the cornerstone of citizenship acquisition, in line with Romania’s constitutional heritage and international legal standards. Over time, this legislative act has undergone numerous amendments and revisions, reflecting both social and political transformations and the alignment required by European Union law in the field of nationality. In its jurisprudence, the Constitutional Court of Romania has emphasized that the granting of citizenship constitutes “a matter of domestic jurisdiction, among the most discretionary prerogatives of the state, and an expression of its sovereignty.” This position corresponds to the consistent case law of the Court of Justice of the European Union, which has reaffirmed the exclusive competence of Member States in matters of nationality (”it is for each Member State, having due regard to Community law, to lay

down the conditions for the acquisition and loss of nationality.", Case C-369/90, *Micheletti and Others v. Delegación del Gobierno en Cantabria, para. 10)*.

3.1. General Provisions

Article 8 of Law No. 21/1991 constitutes the general provision regulating the acquisition of Romanian citizenship upon request, establishing the substantive conditions to be fulfilled by foreign nationals and stateless persons seeking to become Romanian citizens. Through its content, the article expresses the principle that the granting of citizenship does not represent a subjective right of the individual, but rather a public authority prerogative exercised by the state in virtue of its sovereignty. Consequently, the conferral of citizenship is conditioned by the cumulative fulfilment of legal requirements intended to demonstrate the applicant's integration into the political and social community of the Romanian state, as well as his or her loyalty to its fundamental values. The legal text establishes, in paragraph (1), the general conditions that must be met: lawful residence in Romania for a period of at least eight years, or at least five years in the case of persons married to Romanian citizens; proper and loyal conduct toward the Romanian state, without committing acts that could endanger public order or national security; lawful and sufficient means of subsistence; and knowledge of the Romanian language, as well as of the essential elements of the Constitution and the national anthem. Article 8 therefore serves as a framework provision from which all other regulations concerning the acquisition of citizenship derive. In relation to this general rule, the legislator has subsequently established a series of exceptions or simplified procedures, justified by reasons of public or historical interest, which represent expressions of positive discrimination in favor of certain categories of persons.

3.2. Special Provisions

Article 8 paragraphs (2) and (3) of the Romanian Citizenship Law introduce a mitigation of the general requirement of long-term residence, without, however, completely eliminating it. While applicants are ordinarily required to have legally resided in Romania for at least eight years, the law allows for this period to be reduced by up to three years in favor of certain categories of persons. Thus, under paragraph (2), the legislator grants a more favorable regime to those who, in addition to meeting the general conditions, can demonstrate genuine involvement in Romania's economic, educational, or civic life and who fall within one of the expressly mentioned situations, such as being a citizen of a Member State of the European Union, the European Economic Area, or the Swiss Confederation, or being a person born on Romanian territory to parents who held legal residence there. Paragraph (3) establishes a distinct form of preferential treatment for persons who have acquired refugee status in Romania. In this case as well, the general eight-year residence requirement may be reduced by up to three years, provided that the applicant has made notable efforts toward integration, demonstrated through outstanding academic or professional

achievements or through significant civic engagement. In both situations, the provision does not entail the elimination of the long-term residence condition but rather constitutes a normative solution through which the legislator acknowledges that certain individuals, by virtue of their position within the European legal framework and their strengthened connection with Romania, justify a reasonable shortening of the waiting period required for the acquisition of citizenship. Likewise, pursuant to Article 8^1, Romanian citizenship may be granted, through a simplified procedure, to stateless persons or foreign nationals who, through their sustained activity, have made an exceptional contribution to the promotion of Romanian culture, civilization, or spirituality. In this case, the legislator acknowledges not a pre-existing legal bond, but rather a cultural and symbolic one, justified by the merits demonstrated in preserving and promoting the values of the Romanian state. Article 8^2 reflects another dimension of differentiation, allowing the granting of Romanian citizenship to stateless persons or foreign nationals who can make a significant contribution to promoting Romania's image through outstanding achievements in sports. This is conditional upon their representing Romania in national teams, in accordance with the regulations of international sports federations, and upon their fulfilment of certain general conditions set out in Article 8 paragraph (1), specifically those under letters (b), (c), and (e). Although Article 8^2 of Law No. 21/1991 was conceived as a form of positive discrimination intended to reward athletic excellence and the contribution of athletes to enhancing Romania's international image, its legal analysis also reveals potential deviations from the principle of equality enshrined in Article 16 paragraph (1) of the Constitution. In practice, the preferential treatment granted to athletes, who may acquire Romanian citizenship through a simplified procedure that derogates from the general requirements concerning domicile, length of residence, or the knowledge-verification interview, creates an unjustified difference in treatment compared to other categories of applicants who, despite making equally valuable contributions in fields of public interest, are not afforded a similar legal regime. Moreover, the procedure established by law for assessing the fulfilment of the conditions for granting citizenship to athletes is elliptical, as it fails to clearly define the criteria for determining what constitutes "outstanding performance." This normative ambiguity may lead to unequal treatment among applicants in comparable situations, granting the authorities an excessively broad margin of discretion and thereby transforming an exception to the rule into a potential arbitrary privilege. Therefore, although the legislator's intention was to acknowledge and reward international athletic achievements, the current wording of Article 8^2 risks contravening the principle of equality before the law and producing an effective discrimination among applicants, insofar as it favors a specific professional category without an objective and reasonable justification, as required by the jurisprudence of CEDO. Article 10 regulates the possibility for individuals who have lost their Romanian citizenship, as well as their descendants up to the second degree, to reacquire it upon request, while retaining their foreign citizenship and with the freedom to establish their domicile either in Romania or abroad, provided that they duly meet the requirements set out in Article 8 paragraph (1) letters (b)–(e) and demonstrate knowledge of the Romanian language. Within this framework, the legislator abandons the criterion of

residence duration in Romania and the verification of knowledge regarding Romanian culture, civilization, the provisions of the Constitution, and the national anthem, favoring instead the existence of a prior legal bond with the Romanian state, transmissible up to the second generation. Article 11 applies to individuals who were formerly Romanian citizens but lost their citizenship "for reasons not attributable to them" or whose citizenship was withdrawn "without their consent," as well as to their descendants up to the third degree. It recognizes their right to reacquire Romanian citizenship while retaining their foreign citizenship and without being required to establish domicile in Romania, provided that they meet a limited set of conditions, those set forth in Article 8 paragraph (1) letters (b), (c), and (e)—and demonstrate knowledge of the Romanian language. Paragraphs (4) and (5) of Article 15^1 represent the intersection of two requirements that permeate the entire Law No. 21/1991: on the one hand, the need for a minimum level of linguistic integration for persons reacquiring citizenship under Articles 10 and 11, and on the other hand, the reparatory and favorable nature of these procedures. Article 15^1 paragraph (4) provides that the granting of citizenship under Articles 10 and 11 is conditional upon the applicant's knowledge of the Romanian language, which may be demonstrated either by a language proficiency certificate at least at level B1 of the Common European Framework of Reference for Languages (CEFR), issued by Romanian academic or cultural institutions, or by educational documents attesting to at least three years of study in the Romanian language. At the same time, paragraph (5) of Article 15^1 establishes two exceptions to the requirement of demonstrating knowledge of the Romanian language, each raising distinct issues in relation to the principle of equality. The first category consists of former Romanian citizens applying for the reacquisition of citizenship under Articles 10 or 11. The second category, comprising individuals aged 65 and over, reveals, however, a form of effective discrimination, as the exception lacks an objective justification and is not directly related to the purpose of the procedure. The mere attainment of a certain age does not constitute a guarantee of attachment to the state or of cultural connection with it, and the elimination of the language proficiency requirement may, in practice, lead to the granting of citizenship to persons without a minimal capacity for civic and linguistic integration. Another aspect that raises serious concerns regarding the coherence and equality in the application of the law concerns the interview for verifying applicants' knowledge. Although its purpose is to assess the degree of cultural and civic integration, the wording of the provision is elliptical and lacks clear criteria, both as to the content of the examination and the manner of evaluation. The law does not establish objective standards concerning the level of proficiency in the Romanian language or the knowledge of elements of Romanian civilization and culture, nor does it define the degree of detail of the questions or the grading criteria. Consequently, the margin of discretion afforded to the Citizenship Commission within the National Citizenship Authority becomes excessively broad, and the outcome of the interview often depends on purely subjective assessments, which may lead to unequal treatment among individuals in comparable situations and create a state of apparent discrimination.

3.2. Proposals

In order to eliminate these deficiencies and prevent discriminatory treatment in the procedure for granting citizenship, it is necessary to adopt a much more precise regulation, endowed with superior legal force, governing the manner in which the knowledge-verification interview is conducted. At present, the content and evaluation criteria are left entirely to the discretion of a regulation issued by the President of the National Citizenship Authority, an administrative act possessing a lower legal status than the law. Such a solution contravenes the principle of the supremacy of the Constitution and the law, as enshrined in Article 1 paragraph (5) of the Romanian Constitution, since matters that directly affect the exercise of an individual's rights and obligations must be determined by clear and foreseeable legal norms adopted by Parliament. In this regard, the Constitutional Court of Romania, in Decision No. 385/2023, held that "the Constitutional Court elevates predictability and clarity to the level of essential conditions for the quality and constitutionality of the legal norm. Thus, not only must the formulation of a normative act enable the interested person to reasonably foresee the conduct to be adopted, but clarity and predictability are sine qua non elements of constitutionality. Consequently, the Constitutional Court tends to confer increasing force to this requirement, emphasizing not only the quality of the normative formulation itself, but also its coherence with other legal acts and its capacity to be effectively and efficiently applied." In the same vein, the assessment during the interview of the applicant's knowledge of history, geography, general culture, and the Romanian language reveals another serious shortcoming of the current regulation, since these areas are non-legal in nature and require specialized expertise that exceeds the legal training of the members of the Citizenship Commission. In the absence of a clear methodological framework and professional evaluation committees, the examination acquires a formal and inconsistent character, often reduced to a superficial verification process that carries a significant risk of subjectivity. From this perspective, a restructuring of the evaluation mechanism is required through the establishment of an independent specialized committee composed of experts in the linguistic, historical, and cultural fields, tasked with conducting the preliminary assessment of applicants' knowledge. The results of this evaluation would then be transmitted to the Citizenship Commission, which would continue with the strictly legal examination of the application file. Such a solution would provide the procedure with consistency, transparency, and credibility, while preventing potentially discriminatory approaches by the current commission members, who may hold divergent and non-uniform perceptions of the notions of Romanian culture, civilization, or history.

4. The Citizenship Law of Republic of Moldova

4.1. Short Description

The new Citizenship Law of the Republic of Moldova has been promulgated and published in the Official Gazette and is set to enter into force on December 24, 2025. This legislative act holds fundamental importance both for national security and for

strengthening the legal framework aimed at preventing and combating the fraudulent acquisition of citizenship, while integrating recent European experience in matters of administrative control and integrity. Through its content, the law redefines citizenship not only as a legal status but also as a duty of loyalty and responsibility of the individual toward the state and society. Among the major innovations is the elimination of the possibility of submitting applications through intermediaries, including on the basis of powers of attorney, establishing the obligation that the applicant personally file the citizenship application. The new regulation is aligned with the legislative practices of several European states, including Romania, Belgium, Poland, Sweden, Austria, Cyprus, and Croatia, thereby confirming a broader tendency toward harmonization with international standards on the acquisition of citizenship. In the same spirit, the law establishes a general obligation for the applicant to demonstrate knowledge of the Romanian language and of the Constitution of the Republic of Moldova, irrespective of the legal basis of the application. The assessment of linguistic and constitutional competencies is not merely formal but is intended to ensure the applicant's effective integration into society. In parallel, mechanisms for verifying identity, controlling the authenticity of documents, assessing financial capacity, and confirming good reputation and the absence of criminal records have been strengthened. These safeguards were introduced in response to the alarming increase in attempts to obtain citizenship fraudulently, with more than one hundred cases of forged documents or false information being identified in the past three years alone.

4.1. General Provisions

Article 14 regulates, in a detailed manner, the acquisition of citizenship of the Republic of Moldova by naturalisation, setting out the general conditions under which a foreign national, a stateless person, or a beneficiary of international protection or political asylum may apply for the conferral of citizenship. The provision proceeds from the premise that naturalisation constitutes a form of progressive legal and social integration and establishes, as substantive requirements, that the applicant be over 18 years of age, possess lawful permanent residence on the territory of the Republic of Moldova, demonstrate knowledge of the Romanian language and of the provisions of the Constitution, and have lawful sources of income. In addition to these requirements, the applicant must meet at least one of the conditions relating to the duration and nature of residence: a defined number of years of continuous lawful residence within the state's territory, a period of residence during minority, cohabitation within a marriage with a citizen of the Republic of Moldova, or co-residence during the past three years with parents who already hold Moldovan citizenship. Article 14 also defines the minimum standard regarding lawful sources of income, providing that such income is deemed sufficient where the applicant's net monthly earnings are at least equivalent to the minimum national wage and where the activity generating that income has been carried out for a period of at least three years prior to the submission of the application.

4.2. Special Provisions

Article 10 of the new Citizenship Law of the Republic of Moldova regulates the circumstances in which a person may be recognised as a citizen on the basis of a blood, territorial, or historical connection, even if they do not currently possess documentary proof of citizenship. The provision stipulates that persons of full age who have knowledge of the Romanian language and of the Constitution, and who can demonstrate a legal or genealogical link with the Moldovan state, arising from birth, descent, or historical affiliation with territories that have, at various points in time, formed part of the historical space of the Republic of Moldova, may be recognised as citizens of the Republic of Moldova. Article 15 of the Citizenship Law of the Republic of Moldova first provides that the specific procedure for assessing the applicant's knowledge of the Romanian language and of the provisions of the Constitution shall be established by a governmental act, that is, through secondary legislation, thereby granting the executive the authority to organise and standardise the examination process. At the same time, the article introduces three categories of persons to whom this requirement does not apply: individuals with severe or pronounced disabilities that make it difficult to learn the language and the Constitution; persons who are granted citizenship "in the interests of the Republic of Moldova"; and children under the age of 14. Article 16 regulates the granting of citizenship "in the interests of the Republic of Moldova" establishing a special regime distinct from naturalisation. The text provides that the citizenship of the Republic of Moldova may be conferred upon citizens of other states if such conferral serves the interests of the Republic of Moldova, by decree of the President of the Republic of Moldova. Citizenship granted "in the interests of the Republic of Moldova" thus constitutes a special form of acquisition. However, the provision gives rise to a form of apparent discrimination, owing to the lack of clarity in the legal norms governing it. These "interests" are insufficiently defined in the law, which generates a lack of foreseeability and places the provision within the category of legal regulations that produce apparent discrimination.

5. The Citizenship Law of Italy

5.1. Short Description

Italian citizenship is regulated by Law No. 91 of 5 February 1992, together with its implementing regulations, Presidential Decree No. 572 of 12 October 1993 and Presidential Decree No. 362 of 18 April 1994. Compared to the previous legislation, this statute marked a paradigmatic shift, placing greater emphasis on individual intent in the acquisition and loss of citizenship, as well as on the recognition of the possibility of holding multiple citizenships simultaneously. The Italian legal regime of citizenship is founded upon four fundamental principles: the transmissibility of citizenship by descent (jus sanguinis), the acquisition of citizenship by birth on the territory of the state in residual cases (jus soli), the acceptance of dual or multiple citizenship, and the express manifestation of will as a determining element in the acquisition or loss of this status.

5.1. General Provisions

Article 9 of Law No. 91/1992 regulates the acquisition of Italian citizenship by decree of the President of the Republic. The provision establishes a differentiated minimum period of lawful residence required for the submission of an application, setting, as a general rule, a period of at least ten years of continuous residence for nationals of non-EU states and four years for EU citizens. By contrast, no residence requirement is imposed on foreign nationals who have served the Italian state for at least five years, including outside the national territory, which constitutes a form of apparent discrimination. The statute does not provide any indication as to the meaning of "service to the Italian state," thereby creating the possibility of arbitrary interpretation by the authorities responsible for applying the law. In addition to these cases of naturalisation upon request, paragraph (2) of Article 9 provides for a distinct procedure through which Italian citizenship may be conferred ex officio, by decree of the President of the Republic, in situations involving exceptional services rendered to the state or where there exists a compelling public interest justifying the conferral of citizenship. In such cases, the initiative lies with public authorities, prominent individuals, or associations capable of demonstrating that the prospective beneficiary meets the legal requirements. This mechanism likewise constitutes a form of apparent discrimination, as the statute fails to establish criteria or even guiding principles for assessing what may be deemed "exceptional services rendered to the state."

5.2. Special Provisions

The legal framework governing the reacquisition of Italian citizenship is set out in Article 13 of Law No. 91/1992, which regulates the possibility for individuals who have previously lost their citizenship to reacquire it, subject to specific conditions expressly defined by the statute. Accordingly, a special regime is provided for Italian women who married foreign nationals before 1 January 1948 and who, by operation of the law then in force, automatically lost their Italian citizenship upon acquiring that of their husbands. These women may reacquire Italian citizenship by means of a simple declaration, even if they do not reside in Italy, the procedure being carried out through the competent consular offices. Through the amendments introduced by Decree-Law No. 36/2025, as converted by Law No. 74/2025, Article 17 of Law No. 91/1992 has been supplemented with transitional provisions reopening the deadline for the reacquisition of citizenship in favour of former Italian citizens who were either born in Italy or resided continuously for at least two years on Italian territory and who lost their citizenship prior to 15 August 1992 under the former Law No. 555/1912. This possibility is strictly time-limited: it may be exercised only between 1 July 2025 and 31 December 2027 and does not apply to individuals who voluntarily renounced Italian citizenship after 16 August 1992. The temporal restriction of this mechanism amounts to a form of effective discrimination for those who fall within the substantive conditions of the provision but are unable, for objective or subjective reasons, to submit a request before 31 December 2027. Likewise, Law No. 379/2000 provided for the possibility of recognising Italian citizenship in favour

of persons born and formerly residing in the territories of the former Austro-Hungarian Empire that became part of Italy after the First World War, as well as their descendants. Applications could be submitted until 20 December 2010, either to the Italian consular offices for applicants residing abroad or to the civil registry of the municipality of residence for those residing in Italy. The assessment of applications was carried out by an interministerial committee established within the Ministry of the Interior, which issued an opinion on the fulfilment of the legal requirements, followed by the formal recognition issued by the same ministry. This mechanism likewise constitutes a form of effective discrimination against individuals who satisfy the substantive legal criteria but were unable to file their applications by the deadline of 20 December 2010.

6. Conclusions

In conclusion, although Romania, the Republic of Moldova, and Italy differ in their legislative particularities, they share several essential structural features: the imposition of a minimum period of residence on the territory of the state, the requirement to demonstrate knowledge of the national language, culture, and civilisation, as well as the possibility of reacquiring citizenship for former citizens or their descendants originating from territories that historically belonged to these states. These elements reflect a shared vision of legal belonging; however, their practical application reveals significant distinctions between apparent discrimination, which may be justified by a legitimate social objective, and effective discrimination, which arises from arbitrary derogations, elliptical procedures, or unclear evaluative criteria. Accordingly, in order to mitigate the risk of unequal treatment and to ensure compliance with the principle of equality, it is necessary to strengthen and clarify the legislative framework governing naturalisation and reacquisition of citizenship. Only through a normative structure that is clear, predictable, and coherent can citizenship be reaffirmed as a genuine expression of civic integration and identity-based belonging, rather than the product of administrative practices susceptible to arbitrariness.

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PROCEDURAL PATHS TO HUMAN DIGNITY: ENFORCING THE PROHIBITION OF DISCRIMINATION IN SLOVENIA AND BEYOND

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Abstract: *This paper examines the procedural aspects of protection against discrimination, focusing on the legal framework of the European Union and Slovenia. In Slovenia, protection is ensured both before the equality body and before the courts. Unlike purely advisory institutions, the Slovenian equality body conducts discrimination proceedings that may result in declaratory decisions, while victims may also seek remedies before civil courts, which can order the cessation of discriminatory practices and award compensation. This dual system is problematic, as the competences of the two mechanisms are not clearly delineated, which may lead to conflicting outcomes.*

Key words: *anti-discrimination law, EU law, equality body, effective legal protection.*

1. Introduction

Protection against discrimination cannot be limited solely to substantive legal issues. Rather, in the pursuit of implementing its concepts in practice, it must consider procedural mechanisms. This contribution aims to conceptualize the role of equality bodies, which were established within the legal systems of Member States pursuant to European union (EU) anti-discrimination directives, in relation to other authorities that provide legal protection in cases of discrimination, particularly courts. Equality bodies, which were initially established under EU law merely as advisory entities, have, with the adoption of Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC (OJ L, 2024/1499, 29. 5. 2024), and with Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and

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men in matters of employment and occupation and amending Directives 2006/54/EC and 2010/41/EU (OJ L, 2024/1500, 29. 5. 2024) (collectively as the Equality Bodies Directives), gained the capacity to provide more formalized protection for individuals alleging discrimination. Such a distribution of potential competences raises the question of the position of equality bodies in relation to other decision-making authorities, such as inspectorates, and, above all, courts. The simultaneous allocation of the same competence to different bodies allows for the possibility of conflicting decisions, thereby creating legal uncertainty and, ultimately, inefficiency in providing legal protection. Slovenia serves as an example of such a system, where the equality body is (already) endowed with an authoritative, rather than merely advisory, role.

2. Protection against Discrimination: Selected Authorities, Procedures, and Institutions

Procedural aspects of protection against discrimination are – assuming an appropriate substantive basis – essential for safeguarding the rights of discriminated persons. Procedural regulations must ensure that legal protection is accessible and effective, particularly when one of its objectives is prevention (Ellis & Watson, 2014, pp. 502–507). Legal theory has noted that systems based on individual complaints often overlook the power imbalance between perpetrators and victims, as they shift the burden of legal protection onto the victim. This is evident both with regard to rules on the burden of proof and with respect to the duration and costs of (particularly judicial) proceedings.

Some legal systems attempt to address this systemic gap by establishing bodies whose procedures are less costly and less formalized than judicial proceedings, such as the United Kingdom with employment tribunals, the Equal Opportunities Commission and the Commission for Racial Equality, South Africa with Equality Courts, and the United States with the Equal Employment Opportunity Commission, although these bodies also primarily rely on the proactivity of discriminated individuals (Fredman, 2022, pp. 435–437) (see also Kádár, 2018, p. 145).

Another common mechanism to ease the position of the complainant is the reversed burden of proof, whereby the burden of demonstrating that the principle of equal treatment has not been violated is placed on the respondent. The complainant must first establish facts from which it may be presumed that discrimination has occurred. In accordance with this rule the person seeking legal protection must prove facts allowing a *prima facie* finding of discrimination, after which the respondent must demonstrate that no unequal treatment occurred (Henrard, 2023, p. 428). The reversed burden of proof stems from the recognition that requiring discriminated individuals to provide the evidentiary material and ultimately convincing the court is overly difficult (Henrard, 2023, p. 427). Marginalized groups often have more difficulty accessing relevant information (Roberts, 2021, p. 1690), a challenge that is particularly pronounced in situations of unequal power relations, such as the relationship between an employee and an employer (Ellis and Watson, 2014, pp. 157–163). It should also be noted that proving discrimination can be inherently challenging. The reason for differential treatment is often not explicitly stated or appears to be related to other factors rather than the protected grounds of the individuals concerned (*Priročnik o evropskem protidiskriminacijskem pravu*, 2021, p. 226). In EU law, the Court of Justice of the

European Union (CJEU) initially established the reversed burden of proof, which was later codified as a rule in anti-discrimination directives (Article 8(1) of the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Racial Equality Directive), OJ L 180, 19. 7. 2000, pp. 22–26; Article 10(1) of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (the Framework Directive), OJ L 303, 2. 12. 2000, pp. 16–22; Article 9(1) of the Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (the Gender Equality Directive in the field of goods and services), OJ L 373, 21. 12. 2004, pp. 37–43; and Article 19(1) of the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (the Gender Equality Directive in the field of employment), OJ L 204, 26. 7. 2006, pp. 23–36. The rule on the reversed burden of proof has also been applied, *mutatis mutandis*, in discrimination cases before the European Court of Human Rights (Henrard, 2023) and is likewise recognized within the broader framework of international law (*Priročnik o evropskem protidiskriminacijskem pravu*, 2021, p. 234).

2.1. EU Law: Equality Bodies as (Informal) Guardians

The EU has sought to establish a more accessible mechanism for protection against discrimination through equality bodies. They were first established by the Racial Equality Directive, which, in Article 13, imposed on Member States the obligation to set up a body for the promotion of equal treatment irrespective of racial or ethnic origin. This provision intervenes with the institutional autonomy of the Member States, as it requires them to establish a body competent for the public law protection against discrimination (Rossi and Casolari, 2017, p. 139). In addition to the grounds of race and ethnic origin, equality bodies also promote equal treatment in relation to the grounds of sex, particularly in the areas of access to goods and services, employment, and self-employment – domains covered by other anti-discrimination directives.

Equality bodies are conceived as non-judicial institutions aimed at the promotion of equality (Rossi & Casolari, 2017, p. 133). The text of the directives reveals that the core functions of these bodies are primarily advisory and include providing independent assistance to victims of discrimination in pursuing their complaints, conducting independent surveys concerning discrimination, and publishing independent reports and making recommendations on issues relating to such discrimination. Furthermore, the Gender Equality Directive in the field of employment and the Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (the Gender Equality Directive in the field of self-employment, OJ L 180, 15. 7. 2010, pp. 1–6) also envisaged cooperation between equality bodies and relevant EU institutions, such as the European Institute for Gender Equality.

Member States have been granted a relatively broad margin of discretion in establishing equality bodies and determining their modes of operation, which has resulted in significant divergence across the EU (European Commission, 2018, p. 3). The directives permit that equality bodies need not be established as fully autonomous but may instead operate within broader human rights bodies, such as the Human Rights Ombudsman. Nevertheless, one of the core requirements under EU law is the institutional independence of equality bodies (see Recitals (18) and (17) of the Equality Bodies Directives). This requirement is illustrated by the case of Slovenia, where the equality body was initially set up under the Ministry of Labour, Family and Social Affairs and thus within the administrative and executive branch of government (see Draft Protection Against Discrimination Act, EVA 2015-2611-0046). Following a letter of formal notice from the European Commission (violation no. 2014/2093) concerning the independence requirement, Slovenia subsequently established an autonomous and independent public authority responsible for the protection against discrimination (Bedič & Strojan, 2022, p. 1285). The wording of the anti-discrimination directives remains relatively open regarding the functions and competences of equality bodies. Their mandates may therefore range from primarily advisory and promotional activities to more formalised procedures, such as handling individual complaints and issuing (typically non-binding) opinions or decisions (Rossi and Casolari, 2017, p. 142). Equality bodies also provide assistance to victims of discrimination in pursuing their claims, including participation in judicial or administrative proceedings where individuals seek protection on specific protected grounds (Article 7(2) of the Racial Equality Directive, Article 8(3) of the Gender Equality Directive in the field of goods and services, Article 17(2) of the Gender Equality Directive in the field of employment, and Article 9(2) of the Gender Equality Directive in the field of self-employment). It should be recalled that the CJEU has held that equality bodies are not “courts or tribunals” entitled to make references for a preliminary ruling (Case C-394/11 *Belov*, EU:C:2013:48).

The provisions concerning legal protection are regulated separately from those establishing equality bodies. Member States are required to ensure that all persons who consider themselves victims of discrimination have access to judicial and/or administrative procedures, which may also include conciliation processes (Article 7(1) of the Racial Equality Directive, Article 8(1) of the Gender Equality Directive in the field of goods and services, Article 17(1) of the Gender Equality Directive in the field of employment, Article 9(1) of the Gender Equality Directive in the field of self-employment). Furthermore, the Gender Equality Directive in the field of goods and services, the Gender Equality Directive in the field of employment, and the Gender Equality Directive in the field of self-employment require Member States to provide measures ensuring real and effective compensation, which must be dissuasive and proportionate to the damage suffered. In relation to such judicial or administrative proceedings, the anti-discrimination directives establish a rule of reversed burden of proof (Article 8 of the Racial Equality Directive, Article 9 of the Gender Equality Directive in the field of goods and services, Article 19 of the Gender Equality Directive in the field of employment, Article 10 of the Framework Directive).

2.2. Equality bodies in the New Directives

In May 2024, the European Parliament and the Council of the EU adopted two new directives laying down standards for equality bodies. These Equality Bodies Directives expand the competences of equality bodies. The new framework now encompasses protection against discrimination on the grounds of religion or belief, disability, age, or sexual orientation in employment and occupation, as established by the Framework Directive, as well as the promotion of equal treatment between men and women in matters of social security, as set out in Council Directive 79/7/EEC of 19 December 1978 (OJ L 6, 10. 1. 1979, pp. 24–25). The Equality Bodies Directives explicitly require that equality bodies operate independently and be free from external influence in the performance of their functions. They must not receive instructions from governments or from any other public or private entities (Article 3 of both Equality Bodies Directives). The directives also introduce several new procedural instruments. Equality bodies are required to receive and handle discrimination complaints and to offer parties the possibility of alternative dispute resolution – either before the equality body itself or before other competent authorities (Articles 6(2) and 7 of both Equality Bodies Directives). Building on practices developed in the Member States, the new directives allow equality bodies to issue either non-binding opinions or binding decisions (Article 9 of both Equality Bodies Directives). Moreover, equality bodies are empowered to conduct investigations (Article 8 of both Equality Bodies Directives). Where an equality body issues binding decisions, it must have the right to participate in judicial review proceedings concerning those decisions (Article 10(4) of both Equality Bodies Directives). In line with the case law of the CJEU, the directives explicitly grant equality bodies the right to initiate court proceedings on behalf of one or several victims, to participate in judicial proceedings in support of one or several victims, and to bring proceedings in their own name to defend the public interest (Article 10(3) of both Equality Bodies Directives). Member States are required to transpose the new directives into their national legal orders by 19 June 2026 (Article 24(1) of both Equality Bodies Directives).

Building upon the newly adopted framework, Member States retain a relatively broad margin of discretion regarding the organisation and operation of equality bodies. These bodies may adopt either non-binding or binding decisions concerning the existence of discrimination. Such an arrangement raises questions about the relationship between equality bodies and other authorities competent to adjudicate discrimination cases, particularly the courts. In other words, it calls into question whether a binding decision of an equality body on the (non-)existence of discrimination has binding effects on other authorities dealing with the same legal and factual issues. EU law does not regulate these matters, leaving them instead to the autonomy of the Member States.

Slovenia serves as an illustrative example of a system envisaging binding decisions and the related challenges. Slovenia has not yet, however, transposed the new Equality Bodies Directives into its national legal order.

3. The Case of Slovenia: Discrimination Between Equality Bodies and the Judiciary

3.1. General procedural framework

Slovenia established its equality body, the Advocate of the Principle of Equality (the Advocate), through the Protection Against Discrimination Act (PADA, Official Gazette of the Republic of Slovenia, No. 33/16 et seq.) in 2016. As explained above, the establishment of the Advocate followed a formal notice from the European Commission, which held that Slovenia's equality body, organized as part of the competent ministry, lacked the necessary independence (Bedič & Strojan, 2022, p. 1285). The PADA transposed most EU anti-discrimination directives into the Slovenian legal order, while its scope is broader than that of the EU legislation. The prohibition of discrimination applies to all state authorities, local community bodies, holders of public authority, as well as private law entities, in the fields of employment, social protection, education, and access to goods and services (Article 2(1) PADA). Moreover, the list of protected grounds under PADA is broader than in EU law – the protected grounds are illustrative rather than exhaustive (Article 1 PADA).

In Slovenia, the protection against discrimination is divided among several state authorities. Under PADA, the Advocate performs advisory and promotional functions, such as conducting independent research in the field of discrimination, publishing independent reports, raising public awareness, and monitoring the situation in Slovenia (Article 21 PADA). In addition, the Advocate conducts administrative proceedings to determine whether discrimination has occurred. The competence to conduct administrative proceedings is, however, contested. PADA does not explicitly authorise the Advocate to conduct such declaratory proceedings; instead, it empowers the Advocate to issue regulatory decisions ordering the elimination of irregularities, to propose the adoption of measures to prevent further discrimination or to remedy its consequences, and to prohibit further discriminatory conduct (Article 42(3) PADA). The Advocate takes the position that PADA should explicitly provide that a request for consideration constitutes the initiation of an inspection procedure. Consequently, the Advocate does not conduct such procedures but instead carries out proceedings for determining discrimination, in which only a declaratory decision is issued (Advocate of the Principle of Equality, 2019, pp. 46–48). In addition to the provisions of PADA, the Advocate conducts proceedings in accordance with the law governing general administrative procedure (see Article 3 of the General Administrative Procedure Act, GAPA, Official Gazette of the Republic of Slovenia, No. 24/06 et seq.). The Advocate may initiate proceedings on the basis of a complaint submitted by a person who believes they have been discriminated against, in which case that person acquires the status of a party to the proceedings, or *ex officio* if the Advocate becomes aware of the existence of discrimination (Articles 33 and 34 PADA). In proceedings before the Advocate, the rule on the reversed burden of proof applies (Article 40 PADA). Decisions of the Advocate may be challenged before the competent Administrative Court. Another important competence of the Advocate is the ability to request a constitutional review of laws or regulations deemed discriminatory (Article 38 PADA). For instance, the Advocate submitted a request to the Constitutional Court to review the constitutionality of

provisions that restricted same-sex couples from entering into marriage and adopting children (Advocate of the Principle of Equality, 2021, p. 76), as well as provisions that prevented single women from accessing medically assisted reproduction (Advocate of the Principle of Equality, 2025, pp. 85–86).

Separate from the proceedings before the Advocate, PADA provides for legal protection before civil courts. A person who believes they have been discriminated against may bring an action seeking an end to discrimination, the payment of compensation, or the publication of the ruling in the media (Article 39(1) PADA). In judicial proceedings, it is generally not possible to request a mere declaratory finding of discrimination, as such a finding is already implicit in claims seeking the payment of compensation (see e.g. the judgment and order of the Higher Labour and Social Court, Pdp 533/2015 of 5 November 2015). It should be noted that the general lack of competence to issue declaratory decisions on the existence of discrimination may be inconsistent with the requirements developed by the CJEU concerning the effective, proportionate and dissuasive nature of sanctions for discrimination (Case C-30/19 *Diskrimineringsombudsmannen v Braathens Regional Aviation AB*, EU:C:2021:269). In addition, the Advocate may represent a person seeking protection against discrimination before ordinary courts, provided that the person performing procedural acts on behalf of the Advocate is employed by the Advocate and has passed the state bar exam (Article 41(1) PADA).

Given the statutory provisions, such regulation is problematic, as the competences of the Advocate and the courts – at least in the part relating to the elimination or prohibition of discrimination – overlap. The parallel competence of two different authorities, which may consequently adopt conflicting decisions, is inconsistent with the principle of legal certainty, a fundamental element of the rule of law (Concurring opinion of judge Pavčnik to the Decision of the Constitutional Court of the Republic of Slovenia, U-I-6/17 of 20 June 2019).

3.2. Binding effect of the advocate's declaratory decisions?

Neither Slovenian case law nor legal theory has yet critically examined in detail the competences granted to the Advocate under PADA. The (contested) practice of the Advocate raises the question of the relationship between the binding decisions issued by the Advocate in the form of administrative declaratory decisions and other state authorities. Courts do not, at least not in the operative part of their judgments, make an explicit finding as to the existence or non-existence of discrimination. The determination of discrimination is a prerequisite for a court to order an end to discrimination, the payment of compensation, or the publication of the judgment (see the judgment and order of the Higher Court in Ljubljana, I Cp 616/2022 of 28 June 2022).

The fundamental question, therefore, is whether courts are bound, in their decision-making, by a finding of discrimination previously determined by the Advocate of the Principle of Equality. This problem can be analysed through the legal institute of the preliminary issue, defined in legal theory as an issue concerning the existence of a right or legal relationship, the resolution of which determines the merits of the main case

(Dugar et al., 2018, p. 278). A preliminary issue is not the subject of a decision on the main case, but it may become the subject of a decision in another proceeding before a court or administrative authority (Ude et al., 2005, p. 121). If the preliminary issue has already been resolved by the competent authority, the principle of binding effect applies. Similarly, in administrative relations, a civil court is in principle bound by a final decision of an authority in which that authority has adjudicated on a right or legal relationship as the main matter. However, this is subject to the limitations arising from the rules on the objective and subjective scope of finality (Ude et al., 2005, pp. 130–134), which will not be examined here in detail. If the preliminary issue has not yet been resolved by a court or other competent authority, the court may resolve it itself; such a resolution does not form part of the operative part of the judgment on the main case and does not bind any other authority. If the court resolves the preliminary issue itself and the competent authority subsequently issues a different decision, this constitutes grounds for reopening the civil proceedings (Ude et al., 2005, pp. 134–135).

Only a legal matter that the legislator has entrusted to a competent authority empowered to decide with *res judicata* effect can be treated as a preliminary issue (Kerševan & Androjna, 2017, p. 258). As already indicated, Slovenian law does not explicitly grant the Advocate the competence to conduct proceedings concluding with a declaratory decision confirming or rejecting the existence of discrimination. Therefore, the mere determination of discrimination cannot be considered a competence of the Advocate. The Advocate may establish the existence of discrimination only with regard to measures to be adopted in inspection proceedings – namely, the elimination of irregularities, proposals for preventive or remedial measures, and the prohibition of further discrimination – but not in the operative part of the decision. Due to this contested competence, it cannot be assumed that courts are bound by a prior decision of the Advocate when deciding on an end to discrimination, the payment of compensation, or the publication of the ruling. It follows that the existence of discrimination must be established by the courts themselves for the purpose of adjudicating the claim.

This practice and regulatory framework are problematic from several perspectives. The Advocate's competence to issue binding decisions – beyond its advisory powers – is hollow, as courts may decide differently on the same legal and factual matters in subsequent proceedings. From the perspective of victims of discrimination, a prior declaratory decision of the Advocate does not guarantee that courts will find discrimination as well and grant the claim.

It should also be taken into account that proceedings before the Advocate are more favourable to the parties, being procedurally less complex and, above all, more cost-accessible. PADA provides that proceedings before the Advocate are free of charge for the parties (Article 35(1)). Under Slovenian law, the Advocate also has investigative powers (see Articles 37(1) and 139 GAPA), which do not apply in judicial proceedings, where the adversarial principle prevails. It is also significant that in proceedings before the Advocate, parties do not need a qualified representative, such as a lawyer (see Article 53 GAPA), which is not necessarily the case in judicial proceedings (see Articles 87 et seq. Civil Procedure Act, Official Gazette of the Republic of Slovenia, No. 73/07 et

seq.). It is therefore likely that victims of discrimination would first turn to the Advocate and, following a potentially favourable decision, subsequently initiate judicial proceedings seeking an end to discrimination, compensation, or publication of the ruling. The value of these more accessible proceedings, in which a person can first verify the existence of discrimination, is significantly undermined if other state authorities are not bound by the Advocate's findings.

Thus, despite its practice of issuing binding declaratory decisions, the most important function of the equality body in Slovenia remains its advisory role. It is therefore necessary to reconsider how the competences of the Advocate should be more appropriately regulated and defined in relation to other state authorities, both in terms of parallel competences and the binding nature of its decisions.

4. Conclusion

The law against discrimination, due to specific features inherent to this legal field, requires procedural adaptations that enable effective implementation of the principle of equal treatment. The EU has addressed some of these issues through its anti-discrimination directives. Among others, it required Member States to establish equality bodies, which, given the institutional autonomy, vary significantly across jurisdictions: from bodies with competences limited to advisory and promotional functions, to those empowered to make substantive decisions, as well as institutions combining elements of both (Kádár, 2018, p. 147). The new Equality Bodies Directives seek to harmonise those standards. However, the EU does not regulate the relationships between equality bodies and other state authorities, such as courts, leaving this to the autonomy of Member States. An unclear division of competences between equality bodies and other authorities that are likewise competent to rule on discrimination may result in contradictory decisions and, ultimately, undermine the role of equality bodies.

The current Slovenian framework provides an illustrative example of inadequate regulation. PADA does not clearly define the competences of the Advocate of the Principle of Equality, and as a result, the Advocate cannot conduct inspection procedures to remedy discrimination through regulatory decisions (Advocate of the Principle of Equality, 2019, pp. 40–42). Even if such a competence were unambiguously granted, it would raise concerns from the perspective of legal certainty, as the same power is also given to the courts. As the Advocate does not exercise inspection powers, it issues only declaratory decisions confirming or rejecting the existence of discrimination. Nevertheless, this competence lacks a clear legal basis, resulting in the Advocate's decisions not being binding upon other state authorities competent to adjudicate discrimination cases. Slovenia will have to address this inconsistency in the process of transposing the new Equality Bodies Directives, particularly since Article 9(2) of both directives requires equality bodies, in their decisions, to indicate specific measures to remedy any breach of the principle of equal treatment found and to prevent further occurrences.

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THE RECOGNITION OF THE CONTRIBUTIONS FOR THE PUBLIC PENSION AND FOR THE NOT INTEGRATED PENSION SYSTEMS, AS PART OF THE RIGHT TO HUMAN DIGNITY

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Abstract: *This research analyses the restrictive conditions for granting early retirement regulated by the provisions of Law no. 360/2023 on the public pension system in Romania, in the event that the individuals have completed several contribution periods, in different time intervals, both in the public pension system in Romania, but also in other pension plans or in a member state of the European Union.*
People who do not have a complete contribution period in any of the state pension systems in Romania cannot benefit from the recognition of the right to a pension. We note that several professional categories contribute to state pension systems, but are not integrated into the public pension system.

Key words: *public pension system, contribution.*

1. Introduction

The analysed situation which regards the elderly people, as a vulnerable category, is viewed as an issue that affects the human dignity of hard working people (United Nations, 2025).

The issue refers to the recognition of the rights of people who have worked in several jobs and who have therefore paid social security contributions for their pension, but nevertheless cannot benefit from early retirement or old-age pension. The reason for the refusal to recognize the right to a pension is determined by the lack of fulfilment of the conditions regarding the contributory period achieved, in any of the public pension systems. The employees of the Ministry of Internal Affairs can be found in such a situation, although they are civil servants, insured in a sectorial pension fund, dedicated only to employees of this public system. A similar case is that of employees of the Ministry of National Defence or even liberal professional categories, such as, for example, attorneys at law or notaries public.

Of course, we are referring to employees who carry out their activity in public order or

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military sectors throughout the country, either as military personnel or as civilian personnel employed in representative institutions, on the central or decentralized level, in other locations. The situation is partially different for the liberal professions.

Moreover, in the example of employees within the Ministry of Internal Affairs, according to the law, they retire at a younger age than the majority of citizens, who benefit from a pension from the public pension system (integrated). Thus, a person from the Ministry of Internal Affairs retires at the age of 60, and in the public pension system, at the age of 65.

2. The Right to Pension for Romanian Citizens Working in Several Public Systems

We will present the hypothetical example of X., who completed a full contribution period under the following conditions, in the Romanian public pension system: 27 years and 28 days, namely: in the system of the Ministry of Internal Affairs (hereinafter, MAI), including the period of military service - 9 years, 3 months and 3 days (of which 1 year and 6 months represents the period of military service performed). Thus, X. was employed in the Romanian Police, but upon reaching the age of 60, his employment contract was not extended, as a result of the fact that he had reached the standard retirement age for police officers and although he wanted to continue working, this option was not offered to him.

X. also worked in Spain for 1 year, 5 months and 2 days.

Not having a full contribution period in the MAI system to benefit from a pension, X. was forced at the age of 60 to look for another job, in order to be able to work until he reached the age of 65 – the standard retirement age in the public pension system.

X. also submitted an application for early retirement to the territorial pension house, but this was rejected on the grounds that he did not meet the conditions required by the public pension system.

Therefore, in the situation where X. has completed several contribution periods, in different time intervals, both in the public pension system in Romania, but also in other pension systems (for example, within the Ministry of Internal Affairs), and in a member state of the European Union, he is facing restrictive conditions for granting early retirement regulated by the provisions of Law no. 360/2023 on the public pension system. Is there a possibility of cumulating these periods, for the purpose of recognizing the right to early retirement? What about the possibility of recognizing X.`s right to old-age pension?

3. European and National Legal Framework regarding the Accumulation of Contributions to Pension

Considering the aforementioned aspects, we specify that, according to art.162 of Law no.360/2023 on the public pension system, "Between the public pension system and its own social insurance systems not integrated with it, the contribution periods, respectively the length of service or the length of service actually achieved, are mutually recognized, in order to open pension rights.

In this case, the pension from the public pension system is established only for the periods of contribution period achieved in this system".

However, in the public pension system, several periods are considered assimilated, such as that of completing military service (art.14 paragraph 1, letter b, Law no.360/2023), but the MAI pension system is considered a pension system not integrated into the public system and is not taken into account when granting early retirement.

Also, according to art.18 of Law no.223/2015 on state military pensions, "military personnel, police officers and civil servants with special status, in activity, who have an effective seniority of at least 20 years, of which at least 10 years of seniority in service, and who are in one of the following situations are entitled to a partial early service pension:

a) they are transferred to the reserve or have terminated their service relationships, as a result of the reorganization of some units and the reduction of some positions in the organizational states, as well as for other reasons or needs of institutions in the field of national defence, public order and national security;

b) they are transferred to the reserve or directly retired or have terminated their service relationships as a result of being classified as unfit or limitedly fit for military service/service by the medical-military expertise commissions".

On the other hand, according to art.16 paragraph 3 of Law no.360/2023, "When opening old-age pension rights, the periods of employment completed by insured persons within an international organization headquartered in the territory of a member state of the European Union, the European Economic Area, Switzerland or in the territory of the United Kingdom of Great Britain and Northern Ireland are also taken into account, to the extent that the periods of employment are confirmed by the international organization".

From the analysis of the European legislation on the subject, namely, Regulation (EC) 883/2004 on the coordination of social security systems and Regulation (EC) No. 987/2009 laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems, it follows that it does not include regulations that prohibit this accumulation of contribution periods in the case of early retirement among those recognized through national legislation. Thus, according to art.6 of Regulation no. 883/2004 (Accumulation of periods), “unless otherwise provided for in this Regulation, the competent institution of a Member State whose legislation makes: the acquisition, retention, duration or recovery of the right to benefits; the benefit of a particular legislation or access to or exemption from compulsory, optional, continuous or voluntary insurance, conditional on the completion of periods of insurance, employment, self-employment or residence, shall take into account, to the extent necessary, periods of insurance, employment, self-employment or residence completed under the legislation of any other Member State, as if they had been completed under the legislation it applies”.

Also, according to Article 12 of Regulation No. 987/2009:

“(1) For the purposes of applying Article 6 of the basic Regulation, the competent institution shall contact the institutions of the Member States whose legislation has also been applied to the person concerned in order to ascertain all periods completed under those legislations.

(2) The respective periods of insurance, employment, self-employment or residence completed under the legislation of a Member State shall be added to those completed under the legislation of another Member State, to the extent necessary, for the purposes of applying Article 6 of the basic Regulation, provided that the periods do not overlap".

Consequently, noting that a discriminatory situation is created between persons who have completed a contribution period only in a public pension system in Romania, and those who have completed contribution periods in several categories of pension systems belonging to the Romanian State and/or in a Member State of the European Union, we consider it necessary to amend the legislative framework in force, in such a way as to recognize both the contribution period in Romania and that in the Member States of the European Union, respectively to recognize the accumulation of seniority for early retirement, in the case of persons who have contributed to two or more public pension systems in Romania, for the purpose of granting early retirement.

4. The Right to Pension for the Romanian Citizens Working Abroad and Paying a Contribution for Pension

The situation described is relevant from the perspective of ensuring the effectiveness of the right to a pension in relation to the situation in which Romanian citizens have worked and completed a contribution period abroad.

The right to a pension is a social right that ensures access to resources indispensable to the life of the individual, and from the perspective of the case law of the European Court of Human Rights, the legislation providing for the payment of an old-age pension generates a patrimonial right that falls within the scope of Article 1 of Protocol No. 1 to the European Convention on Fundamental Rights and Freedoms.

The real and effective exercise of the right protected by Article 1 of Protocol No. 1 may require positive measures of protection, «in particular when there is a direct link between the measures that the applicant can legitimately expect from the authorities and the right to the effective respect for his "possessions"».

Resolving the issues reported is important for the effective recognition of the right to a pension, considering the persons who can only meet the conditions for the recognition of the right to a pension by accumulating contribution periods in Romania, respectively in other states.

Processing applications submitted in application of the European regulations on the coordination of social security systems presents difficulties inherent in a cross-border procedure.

In order for the competent institution in Romania to be able to process the application for granting pension rights submitted to an institution in another member state, it must be accompanied by all the documents provided for by Romanian legislation necessary for granting pension rights.

In 2019, the National Insurance Institute of Israel proceeded to reinterpret the situation of Romanian citizens who have worked/are working in Israel without establishing their residence on the territory of the State of Israel, especially caregivers of

elderly people, depriving them of the possibility of totalizing the insurance periods provided for in the agreement.

Regarding the collaboration between Romania and Israel, through the Agreement between Romania and the State of Israel in the field of social security, the E 205 IL form was approved, entitled "Application for old-age/early/partially early retirement pension", and according to the Administrative Arrangement signed in Bucharest on 3 September 2013, for the application of the Agreement between Romania and the State of Israel in the field of social security, signed in Jerusalem on 28 February 2011, each competent institution will send to the competent institution of the other contracting party, a form attesting to the insurance periods completed under its own legislation.

The social security agreement concluded between Romania and Israel is approved by Law no. 150/2012, which states in art. 16, point 2, that "if a person does not meet the necessary conditions for obtaining a benefit based solely on insurance periods completed under Romanian legislation, the competent institution shall take into account, to the extent necessary, the periods of insurance, work or residence completed under Israeli legislation, as long as they do not overlap, as if they had been periods completed under Romanian legislation".

Under the existing legal provisions in Israel and domestic court decisions, which establish that a person residing in Israel on the basis of a work permit is not defined as a resident of Israel within the meaning of the National Insurance Law 5714-1953, and their insurance period in Israel will not be taken into account as an eligibility period.

Pension insurance periods completed in Israel must be confirmed as such (pension insurance periods) by the competent institution in Israel in order to be valued (by accumulation) by the territorial pension house in Romania, when establishing the pension rights due from the public pension system in Romania".

5. Other Issues regarding the Right to Pension to which Romanian Citizens are Facing – is Human Dignity Respected?

The holders of the application for the granting of an old-age pension must terminate their employment at the time of registration of the retirement application (formulated under Law no. 360/2023), which we consider to determine a state of unpredictability for the applicants, since until the issuance of a retirement decision recognizing the right to a pension, they have no income and cannot be certain of a favourable resolution of their application. This situation is aggravated by the fact that, constantly, the legal deadlines are not respected for issuing decisions, due to technical difficulties.

The holder of the application for the granting of an old-age pension (when the applicant is a woman) can choose either to continue working until the age of 70, or to be granted an old-age pension. In this regard, in the context of Decisions no.387/2018 and no.112/2021 of the Romanian Constitutional Court, the provisions of art.46 paragraph (2) of Law no. 360/2023 are applicable to women who are the subject of these decisions upon reaching the age of 65, respectively if this age is reached after the 1st of January 2024, the date of entry into force of the respective article".

The persons provided for in art. 46 paragraph 2 of Law no. 360/2023 who request the

granting of an old-age pension starting with January 1st, 2024, must provide proof of a certificate issued by the employer that they are not subject to art. 46 paragraph 2 of the law, as well as by a declaration on their own responsibility that they will not continue their activity until they reach the age of 70 years.

Therefore, if the applicant was granted the right to an old-age pension upon reaching the age established by law (for example, in September 2024, when the required age is 62 years and 3 months), we consider that the same applicant can conclude a new contract for an indefinite or fixed term with the same or another employer (in the private sector). Under these conditions, the applicant can combine the two qualities, that of a pensioner and that of an employee (in the private sector), benefiting from the accumulation of the pension with the salary, until the age of 65 (Ticlea, 2024).

However, the people in this situation were not aware of this interpretation, which was not brought to their attention by the territorial pension funds they contacted, being forced to complete the declaration on their own responsibility pursuant to art. 46 paragraph (2) of Law no. 360/2023 and, therefore, to choose either for the termination of the employment relationship or for the suspension of pension rights as a result of continuing work activity, after submitting the application for recognition of the right to a pension.

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BEYOND RATIFICATION: KOSOVO'S UNIQUE PATH TO SAFEGUARDING HUMAN DIGNITY AND FUNDAMENTAL RIGHTS

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Abstract: *Amidst the ongoing efforts to become a full member of the international community, the Republic of Kosovo applies a temporary yet effective approach for safeguarding human dignity and fundamental rights: providing, via its Constitution, direct applicability to nine notable international human rights instruments, the latest being the Istanbul Convention in 2020. In this paper, we analyze the feasibility of this model and its application in practice. By essentially mirroring UN and CoE human rights standards, the Republic of Kosovo offers a unique case on protecting human rights, while still being a member of neither organization. This fact alone should qualify the state for membership in both.*

Key words: *human dignity, human rights instruments, constitutionalization, Republic of Kosovo, unique*

1. Introduction

A state undoubtedly has moral and positive obligations to safeguard the human dignity and fundamental rights of its citizens. This holds true even (or especially) when the very statehood of the entity is contested. To this end, bypassing obstacles in formally joining human rights instruments and international organizations requires a certain degree of legal ingenuity.

In the heart of Europe, such is the case of the Republic of Kosovo, which has uniquely constitutionalized several international human rights agreements and instruments from the UN and the Council of Europe, notably the European Convention on Human Rights (ECHR), providing for their direct applicability and primacy over laws, all the while being unable to sign or ratify them pending membership to both organizations.

This innovative model was first introduced during the international presence of the

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United Nations Interim Administration Mission in Kosovo (UNMIK) through its Regulation No. 1999/24 on the law applicable in Kosovo. The direct effect model was then preserved with the adoption of the 2001 Constitutional Framework for Provisional Self-Government (Regulation No. 2001/9), and notably with the post-independence Constitution of the Republic of Kosovo in June 2008, whose preamble enshrines those positive obligations.

The constitutionalized human rights instruments have guided Kosovan institutions in shaping extensive national reforms, both through law and policy. For years, the implementation of conventions has also been subject to monitoring and reporting.

As a testament to the model's success, the "catalogue" of human rights instruments was expanded for the first time through Constitutional Amendment No. 26 of 2020, taking up the obligations of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), commonly known as the Istanbul Convention.

Despite formal disadvantages, through its ambitious approach, the Republic of Kosovo has made comparable progress to many well-established counterparts.

2. Constitutionalization Model

The foundation of the model is enshrined in Articles 22 and 53 of the Kosovan Constitution. Article 22 [Direct Applicability of International Agreements and Instruments] provides an enumerated list of human rights instruments that has remained fairly constant throughout the transitional frameworks. The amended article states as follows:

"*Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:*

(1) Universal Declaration of Human Rights;

(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;

(3) International Covenant on Civil and Political Rights and its Protocols;

(4) Council of Europe Framework Convention for the Protection of National Minorities;

(5) Convention on the Elimination of All Forms of Racial Discrimination;

(6) Convention on the Elimination of All Forms of Discrimination Against Women;

(7) Convention on the Rights of the Child;

(8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;

(9) Council of Europe Convention for preventing and combating violence against women and domestic violence.".

These nine and counting international instruments are automatically applicable by Kosovan courts and public bodies and have been incorporated into the legal order of the Republic of Kosovo, irrespective of the latter's status as signatory. They neither exclude nor limit each other, nor do they diminish the fundamental rights and freedoms set

forth in other constitutional provisions; rather, in fact, they serve to advance and evolve them (Constitutional Court of the Republic of Kosovo, 2019, pp. 6, 8).

Moreover, it should be noted that, while expanding the constitutionalized catalogue requires significant political consensus and commitment, this has not prevented Kosovo from unilaterally aligning and harmonizing national legislation with other international conventions, particularly as regards criminal law (Kullaj, 2024, p. 274).

Interestingly, a human rights instrument found in UNMIK Regulation No. 1999/24 was seemingly left out later in the 2001 Constitutional Framework and the Constitution of the Republic of Kosovo. This instrument is the International Covenant on Economic, Social and Cultural Rights, and while the reasoning behind the omission is unclear, Kosovo has expressed interest in "reconstitutionalizing" it as it would complement the catalogue well (Government of the Republic of Kosovo, 2021, pp. 9-10).

Worth mentioning in this juncture is Article 23 of the Constitution, placing Kosovo among the few states that enshrine the values of human dignity under a specific article of their constitutions. Titled [Human Dignity], Article 23 succinctly states that "*Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.*".

The constitutionalized human rights standards are referenced extensively in Kosovan case law. Utilizing the empirical data from Loevinsohn and Larik's article (2024, pp. 300-301, 309), we observe that within the database of the Constitutional Court of Kosovo (CCK), predictably, the most referenced are the ECHR and the ECtHR with over 6.000-7.000 mentions, followed by the Universal Declaration of Human Rights with over 200, and so on. Moreover, performing a similar selective keyword search, we find that until now, the Istanbul Convention has been referenced in three CCK cases, two of which with findings of infringement.

2.1. The ECtHR Question

While Article 22 incorporates the ECHR and its protocols, Article 53 makes reference to ECtHR case law. The latter is titled [Interpretation of Human Rights Provisions] and states that "*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.*".

Under this provision, public bodies of Kosovo, and the judiciary in particular, are obligated to act consistently with ECtHR case law (Hert and Korenica, 2016, p. 166). However, unlike the ECHR under Article 22 of the Constitution, ECtHR case law does not necessarily have a direct effect in Kosovo. The general consensus is that the ECtHR's effect merely serves an interpretative function (Loevinsohn and Larik, 2024, p. 298; Garcia and Cucchi, 2017, p. 6; Hert and Korenica, 2016, pp. 165-166).

As senior expert Bardh Bokshi points out in his recent overview of ECHR references and standards in CCK case law (2025, p. 4), what on one side has been called a "Strasbourgization" of CCK case law, on the other side has also left room for divergent interpretation – a "Kosovarization" of the ECHR, as he puts it – due to the ECtHR being unable to review Kosovan public decision making.

3. Implementation Monitoring

Undertaking the implementation of international human rights instruments also makes the Republic of Kosovo subject to reporting and monitoring from the respective mechanisms. The relationship with the European Union, especially the obligation to approximate legislation to the EU *acquis*, has been established with the EU-Kosovo Stabilization and Association Agreement, in force since April 2016.

In the European Commission's Kosovo 2025 report, which accompanied the Commission's communication on the state of play of enlargement, the latter has found Kosovo's cooperation with international human rights monitoring bodies satisfactory. The report notably highlights the constitutionalization method, and the Commission even urges further expansion when it notes that the incorporation of the UN Convention on the Rights of Persons with Disabilities (CRPD) is still pending (European Commission, 2025, p. 32). In truth, a constitutional amendment was proposed in October 2023 to include the CRPD in Article 22 of the Constitution, along with the CCK's approval, but it did not go through in the Assembly due to procedural reasons. However, as of yet, no other attempts have been made to renew the proposal either, hence the Commission's observation.

As for the Council of Europe, after PACE's positive recommendation for Kosovo's membership, the final decision now rests with the Committee of Ministers. As civil society organizations point out, "*Accession to this organisation will help to close the monitoring gap that currently exists with several Council of Europe conventions which are directly applicable in Kosovo in line with Article 22 of the Constitution.*" (YIHR, 2025, pp. 3-4). When accession inevitably comes, the experience gained under this model will not have been in vain. Indeed, Kosovo "*can hit the ground running and fully integrate more easily* [...]" (Loevinsohn and Larik, 2024, p. 308) and will undoubtedly have much to contribute as a full member of the international community.

Despite the accession and recognition efforts, on 25 September 2020, the Assembly of Kosovo took a major step by amending Article 22 of the Constitution to integrate the revered 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention. Following this development, a delegation led by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), as the Istanbul Convention's monitoring mechanism, conducted an assessment in 2022 of Kosovo's alignment with the Convention's standards.

The GREVIO report highlights numerous initiatives taken by the Republic of Kosovo, both before and after the constitutionalization of the Istanbul Convention. Indeed, GREVIO has commended Kosovo on its efforts over the last ten years "[on devising] *comprehensive laws and policies to tackle violence against women and domestic violence.*" (GREVIO, 2022, pp. 7, 87).

Just a year before the amendment, Kosovo adopted the new Penal Code, and with it also introduced the criminal offenses of sexual harassment and female genital mutilation, as well as further refinements in November 2023. Drawing from the Istanbul Convention standard, in September 2023, the Republic of Kosovo adopted the new Law

on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence.

The report also welcomes the policy measures contained in the National Strategy on the Protection against Domestic Violence and Violence against Women (2022-2026), which is now nearing its term and should be renewed. Similarly, Kosovo adopts a unique policy document titled "Program for the Protection and Promotion of Human Rights and Fundamental Freedoms". The current 2021-2025 Program is also nearing its term, and so an important step for Kosovo has been the drafting of the 2026-2031 Program and the corresponding Action Plan (2026-2028).

Ambition notwithstanding, the scale of implementation of the international obligations is invariably influenced by multiple factors. In Kosovo's case, the most commonly referenced is adequate funding. Presently, the internal political instability has seemingly shifted the focus from human rights to party rights. While challenges remain, Kosovo is undeniably more closely integrated regionally and human rights more consolidated domestically (Loevinsohn and Larik, 2024, 308).

4. Conclusions and Discussion

Choosing to constitutionally ensure the direct applicability of nine and counting international human rights instruments as a workaround to pending recognition not only presents the Republic of Kosovo as a unique model in the region and beyond, but also as quite a feasible one. Kosovo's determination to safeguard human dignity and fundamental rights is reflected in the implementation of the constitutionalized instruments through far-reaching national reforms, a progress noted even by monitoring mechanisms. One would think that such invaluable experience and achievement would make the country automatically eligible for membership in both the UN and the CoE.

As the Kosovan state continues to expand and implement its constitutionalized catalogue irrespective of accession hurdles, other direct challenges must also be addressed. As UNMIK ceases its functions, Kosovo institutions should report directly on the implementation of the catalogue and must maintain direct communication with international monitoring mechanisms. In the same vein, domestic human rights mechanisms, such as the Office for Good Governance and Human Rights, Human Rights Units in ministries and municipalities, and the Ombudsperson, must be strengthened.

Finally, it is paramount to allocate an adequate budget for human rights protection that will positively influence the implementation of human rights conventions and laws.

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DEFENSIVE DEMOCRACY AND HUMAN DIGNITY: MEANS TO AN END. A LOOK AT THE ROMANIAN CASE

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Abstract: *In its practice of militant democracy in 2024, the Constitutional Court of Romania did not explicitly refer to human dignity as a justification for the judicial outcome. In 2025 the Court expressly advanced human dignity, "the foundation of constitutional democracy", as a legal argument to justify the constitutionality of amendments and supplements of criminal law provisions sanctioning, inter alia, expression. The Court activated, as a first, art. 17 of the European Convention on Human Rights (prohibition of abuse of right) and, in relation to it, quoted the Strasbourg Court on the notion of defensive democracy, thus contributing to a beneficial dialogue on human dignity in the logic of defensive liberal democracy in Romania.*

Key words: *defensive democracy, militant democracy, human dignity, liberal constitutional democracy, Romanian Constitutional Court, Decision no. 355 of 10 July 2025, freedom of expression, abuse of right, art. 17 ECHR*

1. Introduction

To defend liberal democracy is not a goal in itself, but a means to the end of protecting, inter alia, human dignity, a core value, a functional principle and one of the purposes of liberal constitutional democracy, without which the latter would be affected in its justificatory logic, as it is based on and gravitates toward the protection of human rights and dignity. The latter's presence in the legal discourse of the actors practicing defensive and even militant democracy is useful in Romania in order to maintain a human-centered culture in which human dignity is an efficiently protected reality in a society organized as a constitutional democracy and a rule of law state.

Human dignity is to be conceived as an inevitably incomplete concept, political rather than metaphysical (Addis, 2013, p. 348). It is not fixed, but constructed through dialogue, particularized and contextualized in a polity conversing also with other polities, involving various actors (legislator, constitutional judge, courts, scholars, individuals, etc.). As a legal concept, human dignity does not have an immutable

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substance, but it is built through what is prohibited in the name of its protection (Dănișor, 2025, pp. 259, 262), as well as, if we envision it from the angle of the social state, through what it imposes as positive obligations. Because the construction of dignity should remain open in an upward direction that increases its protection and hence that of the human being, we will touch on how the Constitutional Court of Romania (CCR) recently perceived what the protection of human dignity against current specific threats prohibits and requires.

2. Human Dignity: Part of the End for which Defensive Liberal Democracy is a Means

Trenchantly put, "when it comes to democratic militancy, it is not democracy pure and simple that is at stake, but liberal democracy (…) an opponent of every system that is antithetical to it, which means that defending liberal democracy is not and cannot be unjustified, because it is inevitable" (Wagrandl, 2018, p. 144). It was argued even that the term "militant democracy" is "paradoxical, almost oxymoronic", since it is "linked to the counter-majoritarian side of liberal constitutionalism, the rule of law", being «the ultimate form, apogee or spearhead of the "(militant) state of law"» (Iancu, 2025b).

Against threats, even in the absence of violence designed to undermine the democratic state (Capoccia, 2013, p. 214), a militant democracy defends itself, as liberal democracy, through pre-emptive collective or individual measures such as restrictions on rights of participation and expression. Their application must be "subject to impartial oversight" (Ibid). Not all defensive democracies are militant. Defending democracy also encompasses "long-term goals strategies, such as those aiming at promoting, through education, democratic propaganda, etc., a democratic culture" (Capoccia, 2001, p. 432).

Other supporters of the need for democracy to be defensive against extremism without being militant propose the social-democratic self-defense (Malkopoulou, Norman, 2018). The main two arguments put forward, in line also with the republican philosophy of non-domination, are social non-dominance as a precondition for citizens to be able to exercise their liberties (social justice being a precondition for political participation and for stabilizing democracy, not an end in itself) and "the need for political stability to be grounded in political and economic equality, political crises (…) being symptoms of the structural weakness of the socio-economic order" (Malkopoulou, Norman, 2018, p. 12-13).

Why, to what end should liberal democracy be defended? It is to give effect to its constitutive values and principles (conceived in a proceduralized sense, not an axiological immutable one) for which constitutional democracy and the imperatives of the rule of law function as a dynamic instrumental net of guarantees. According to art. 1(3) of the Romanian Constitution (RC), these values are human-centered and dignity is one of them: "Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed".

Historically, European democracies "have been open to the idea of limiting democratic rights in order to protect the core of liberal democracy" (Maftean, 2018b). The Basic Law of Germany, the first modern Constitution to include means of militant democracy, provides: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority" [art. 1(1)]; associations whose aims or activities contravene the criminal laws or that are directed against the constitutional order are prohibited [art. 9(2)]; forfeiture of basic rights in case of abuse of freedoms of expression, of the press, of teaching, of assembly, of association, of the privacy of correspondence, posts and telecommunications, of the rights of property or the right of asylum in order to combat the free democratic basic order [art. 18: the forfeiture and its extent shall be declared by the Federal Constitutional Court]; "Parties that, by reason of their aims or the behavior of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional" [art. 21(2)]; exclusion from state financing for parties that, by reason of their aims or the behavior of their adherents, are oriented towards an undermining or abolition of the free democratic basic order or an endangerment of the existence of the Federal Republic [art. 21(3), introduced after the National Democratic Party case in 2017].

Defensive democracy is thus a means to the end of protecting liberty, equality and dignity. However obvious it might appear, advancing human dignity as a normative justifying principle or value of liberal democracy and the rule of law and legal argument in favor of militant or defensive democracy (as the FCC did in its case law on party bans) is not that widespread among scholars who adhere to the doctrine of militant democracy. Nevertheless, some of them have rightly argued that human dignity justifies militant or defensive democracy from both the liberal and the democratic standpoints.

From the liberal one, it is in the reading of the FCC's 2003 case on whether it should ban the NPD party that it was argued: « human dignity is foundational for all of political morality and any notion of rights must be founded upon it (…) being foundational does not mean that it is used as just a background principle (…) the court agrees (…) stating that "[We are] responsible especially [for] the protection of individual legal interests such as dignity, life and health" (…) the court believes that threats to human dignity are also threats to the democratic basic order (…) they insist upon posting that dignity comes first (…) the majority (…) emphasized that Article 21, paragraph 2 was not only designed to prevent dangers to the existence of the "free democratic basic order" but to also "foreclose attacks on human dignity" (…) there is agreement that dignity can, and should, be protected by militant measures (…) militant democracy is derivative of the need to secure dignity» (Maftean, 2015, p. 136).

In Judgment of 17 January 2017 (No prohibition of the NPD as there are no indications that it will succeed in achieving its anti-constitutional aims), the FCC clearly stated that "the free democratic basic order" encompasses "the central basic principles that are absolutely indispensable for the free constitutional state" and is "rooted primarily in human dignity"; the latter's guarantee covers "in particular the safeguarding of personal individuality, identity and integrity, as well as the fundamental equality before the law. Concepts aimed at racist discrimination are incompatible with this finding."

From the democratic standpoint, human dignity has "a dual relationship" with democratic ideals: it is "the background norm, an abstract principle, frequently perceived as a justification for democratic rights of participation" and "signifies a particular social status or social practice arguably instrumental to active participation and the use of democratic rights" (Norman, Beckam, 2024, p. 484). In other words, protection of human dignity is beneficial for democracy; threats to the former are threats to the latter. Respect for dignity thereby "serves as a meta-function related to the recognition of full membership in a political community that is necessary for more specific rights to be respected, including democratic ones" (Id, p. 585).

A "paradigm shift" was observed in militant democracy "when it aims to protect the democratic values underlining the institutional arrangement, one that builds parameters which cannot be infringed upon, thus substantiating certain action as illegitimate" (Maftean, 2018b). From the "substantive-procedural perspective" of this author, a democratic defensive action is needed to prevent the violation of liberal fundamentals - equality, liberty, dignity -, core normative values protected from being exposed to majoritarian decision making (Maftean, 2018a, p. 72).

The RC guarantees these fundamentals [art. 16, art. 23 and art. 1(3)]. It also provides mechanisms of democratic self-defense (including the social state, related to the model of upholding social justice and liberty as non-domination) and of militant democracy, such as: constitutional democracy [art. 1(4)]; political parties have to observe national sovereignty, territorial integrity, the legal order and the principles of democracy [art. 8(2)]; unconstitutionality of political parties or organizations which, by their aims or activity, militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania [art. 40(2)]; the RCC has the power to decide on the objections of unconstitutionality of a political party [art. 146k)], but not of any other type of association [lack of correlation with art. 40(2)]; freedom of expression shall not be prejudicial to the dignity, honor, privacy of a person, and to the right to one's own image [art. 30(6)]; any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law [art. 30(7)]; constitutional rights and freedoms shall be exercised in good faith, without any infringement of the rights and liberties of others (art. 57); political pluralism shall not be subject to constitutional revision [art. 152(1)]; no constitutional revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or of the safeguards thereof [art. 152(2)]. As for the legislative level, we exemplify with Law no. 157/2018 on certain measures for the prevention and combating of anti-Semitism and Government Emergency Ordinance no. 31/2002 on the prohibition of organizations, symbols and acts of a fascist, legionary, racist or xenophobic nature and the promotion of the cult of persons guilty of committing crimes of genocide against humanity and war crimes (consolidated five times until 2025 and deemed to have been adopted "half-heartedly to secure EU accession" and "a paper tiger ever since" (Iancu, 2025a).

3. Human Dignity and Defensive Democracy in Motion in Romania in 2024 and 2025

In its practice of defending democracy observed herein, the RCC moved from not expressly invoking human dignity as justificatory for the defense of the constitutional order, constitutional democracy and the rule of law, when referring to "promoting anti-Semitic discourse" [human dignity was mentioned only when setting art. 1(3) RC as the framework of reference] to explicitly advancing dignity as a legal argument to justify criminal law restrictions of, among others, expression, thus upholding measures of what the RCC referred to, for the first time, as defensive democracy.

3.1. Ruling no. 2/2024 - human dignity not explicitly advanced (but implied?)

In Ruling no. 2 of 5 October 2024 on the challenge to a registration of candidacy in the 2024 presidential elections (candidacy ban), the RCC does not explicitly put human dignity in relation to speech and conduct deemed contrary to the principles of the rule of law and constitutional democracy. The Ruling encompasses appreciations of a principled nature that justify in general the protection of constitutional democracy ("democratic levers and procedures cannot be diverted from their purpose, it being impossible for them to lead to the denial of the very values and constitutional principles in the application or development of which they were regulated") and which attest, without the RCC wording it as such, that the RC provides mechanisms of defensive democracy through which it defends constitutional democracy (a principle that "alongside that of the rule of law, underlie the organization and functioning of the state"), and more broadly it preserves "the democratic nature of Romanian society" because it "discourages and sanctions manifestations that constitute a major risk" to it.

The RCC makes generic references to rights, freedoms, supreme values in the rule of law state, to "the interest of the state and society to develop on a democratic basis" and to the guarantees of the rule of law and of constitutional democracy which is considered "the foundation and benchmark of the Romanian state, incompatible with arbitrariness, voluntarism, extremist manifestations and whim", while "democracy, the rule of law and respect for the Constitution constitute the essential, immutable and defining coordinates of the Romanian state". The RCC does not stress that these guarantees are designed to ensure the effective protection of rights and freedoms and of their underpinning individual values, such as human dignity, not even when emphasizing that "any citizen can criticize the content or normative solutions" of the Constitution and "can advocate, propose and debate topics that involve" constitutional revision, "under the condition of being in accordance with democratic values and rules, democratic regress or the rule of law being excluded".

Secondly, The RCC does not mention dignity when referring to "the constant speech" of the candidate, through which she "urges to change the democratic foundations of the state and to violate the constitutional order", and not even when the RCC refers to "the promotion of a constant anti-Semitic discourse" and "of a systematic, persistent and long-term conduct intended to affect the constitutional foundations of the Romanian state and its guarantees, namely Romania's membership of Euro-Atlantic structures. The

call to disregard the fundamental values of the Constitution represents a frontal attack on democratic ideas and principles and on the constitutional order". Unlike the FCC, the RCC does not distinctly assess whether anti-Semitic speech is contrary to dignity as a specific fundamental value of the Constitution or as a democratic idea or principle.

We could speculate that human dignity is implicitly present in the RCC's reasoning. What is clear is the emphasis on Romania's membership in the EU and Euro-Atlantic structures, guarantee of the constitutional foundations of the state. Maybe the RCC implies that, alongside the rule of law and constitutional democracy, these are guarantees of supreme values, including human dignity. The RCC does not individualize it as such a value in the rule of law state, as stated in art. 1(3) RC (invoked only en bloc, as a basis for the subsequent assessments) and does not connect it to the obligations to respect the Constitution and to defend democracy (considered special eligibility conditions for running for President) or to the democratic society. The RCC does not contextualize systematically through a possible reference to art. 30(6) RC protecting the dignity of the person against freedom of expression or to art. 30(7) RC or to the obligation to exercise fundamental freedoms in good faith (art. 57 RC) and, in relation to it, to the abuse of right. The option to problematize by means of a broader systemic interpretation could have given more weight to the argumentation, from a principled outlook, anti-Semitic speech being criminally illegal under Law no. 157/2018.

The authors who concurred to a different extent with the militancy in Ruling no. 2/2024 did not approach it from the angle of human dignity. Addressing "the substantial merits" of the Ruling, an author argued that "for a state that for the most part of the 20th century was a dictatorship, it feels reasonable to want to impose a commitment to basic liberal values and the principles of rule of law as a condition of eligibility to the highest public office. The Court sent a powerful message to all potential candidates: while political programs are free to circulate in the marketplace of ideas, fundamental rights are not up for negotiation" (Mercescu, 2025, p. 254-255). On a contrary note, the author according to which banning the candidacy "was not inherently unjustified in the logic of militant democracy", pointed out that "No matter how contrary their ideas are to the accepted public (…) the politicians should be free to speak their minds (…) democracy is capable of self-hygiene, and this kind of discourse could be tempered by the dominant pro democratic discourse and sanctioned, if necessary, by criminal law (for example, in the case of hate speech and incitement to violence). If this is not possible, then militant democracy is useless." (Guțan, 2025).

From the standpoint of the Parliament and the RCC, the criminalization of hate speech is a useful militant democracy measure. The RCC held that amending and supplementing GEO no. 31/2002 and Law no. 157/2018 was necessary in a democratic society and justified by the need to increase the protection of human dignity.

3.2. Decision no. 355/2025: explicit reference to human dignity as "the foundation of constitutional democracy" and to defensive democracy; activation of art. 17 ECHR

As in Ruling no. 2/2024, in Decision no. 355 of 10 July 2025 on the objection of unconstitutionality of the Law for the amendment and completion of GEO no. 31/2002

and for the amendment of Law no. 157/2018, the RCC does not invoke art. 30(6) and (7), art. 57, and this time not even art. 1(3) of the Constitution, when stating the necessary protection of human dignity against the acts to which the law refers. However, as a remarkable novelty, the RCC activates the abuse of right rationale, taking the ECtHR's avenue of justifying individual militant democracy measures through art. 17 of the European Convention on Human Rights (ECHR), Prohibition of abuse of rights: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms set forth herein or at their limitation to a greater extent than is provided for in this Convention." Instrument of transnational militant democracy which "in light of common commitment to liberal democracy" counters "attacks on it if they come from individuals" and "protects the Convention wherever it applies" (Wargandl, 2018, p. 169), art. 17 ECHR helps implement a model of militant democracy that presupposes limitations including for freedom of speech and "has a sound justification by necessitating the protection of democracy's underlying values" (Maftean, 2018b), such as human dignity.

After referring to the ECtHR's case law on the limits of freedom of expression, the RCC invokes art. 17 ECHR, then passes through some of the ECtHR's relevant case law on the matter, to conclude that the facts to which the contested law refers fall, "in principle", within the scope of art. 17. When citing from The ECtHR's case law on art. 17 (e. g, "given the very clear link between the Convention and democracy, no person should be entitled to rely on the provisions of the Convention in order to undermine or destroy the ideals and values of a democratic society (...) the general purpose of Article 17 (…) is therefore to prevent totalitarian or extremist groups from exploiting the principles enshrined in this international instrument for their own benefit"), the RCC expressly mentions, in a welcomed first, the ECtHR's conclusion that art. 17 ECHR is linked to the notion of "self-defending democracy"/"defensive democracy".

As for applying also the proportionality test, once the RCC individualizes the legitimate nature of the purpose of the law "namely to protect, by means specific to criminal law, essential values and principles of democracy against acts that pose a major danger to the foundations of democratic political systems", without yet specifying what these values and principles are, the RCC cites as "being In the same vein" assessments from the explanatory memorandum of the law, that do not refer to human dignity, but, e.g., to democratic society, which guarantees the fundamental rights and freedoms, to preventing and combating anti-Semitism, xenophobia, radicalization and hate speech as acts of social justice, to anti-Semitism as a threat to democracy and society as a whole, not only to members of Jewish communities. The RCC later refers to collective rights of a national minority, the violation of which would violate the human dignity of its members. When specifying the necessary character in a democratic society of a "clear definition of the types of materials that are used to transmit/promote fascist, legionary, racist or xenophobic, respectively anti-Semitic ideas, conceptions or doctrines in the public space", the RCC focuses on the human being, stating "the total incompatibility of such totalitarian ideological values" with "the protection of the human being in his or her individuality" which "together with tolerance and mutual respect" are "values that

structure a democratic and constitutional culture". Human dignity is understood in terms of autonomy of individuality and respect for the human being. The reference to the structuring character of the mentioned values for the democratic and constitutional culture (not only for the state as a constitutional democracy) is salutary.

In the culminating point of advancing human dignity as legal argument, the RCC concludes with principled value: "it cannot be accepted that a fundamental value of democracy, such as freedom of expression, becomes a screen or a dome formally invoked for the promotion at the level of democratic society of values, ideas, concepts and doctrines that, in fact, have campaigned and continue to campaign for the destruction of constitutional democracy itself and its foundation, human dignity". Human dignity is thus highlighted as the foundation of constitutional democracy and as a legal and cultural justification of the criminalization of the acts referred to in GEO no. 31/2002 and Law no. 157/2018.

The approach from a cultural and historical perspective continues with the emphasis on protecting and guaranteeing the dignity of the human being, seen as a "democratic culture that cannot be relativized" by "promoting in the public space ideas, concepts and doctrines" aiming also "to undermine the pluralistic democratic regime". In the RCC's interpretation, clarifying the legislation in force is necessary also because this promotion could be done by an "easy instrumentalization through the new means of mass communication of the image fixed in the collective mind of the persons who were part of the leadership of fascist, legionary, racist or xenophobic organizations representing historical symbols of the respective totalitarian and anti-democratic political movements from the interwar period". The RCC draws attention to the fact that an effective protection of the human being is culturally and historically contextualized. In like manner, both human dignity and defensive democracy depend on particular cultural and historical context and experiences (Addis, 2013; Capoccia, 2013, p. 214).

The RCC qualifies "promoting and justifying terrorism and war crimes, incitement to violence, promotion of totalitarian ideologies (communism, fascist, Nazi, legionary ideology), incitement to hatred (xenophobia and racial discrimination, hatred on ethnic grounds, religious hatred), denial of the Holocaust and other related issues" not only as threats to "constitutional order, justice and peace", but also as "major violations of fundamental rights" and of "the principles of democracy and the rule of law, which underlie the political systems of the signatory states of the Convention". This "requires increased and effective protection from the state, including for the individuals, groups of individuals, social categories or communities targeted, as well as a sanctioning regime proportional to the gravity of the acts (…) the preeminence of these values not only justifies, but also requires an adequate criminal policy, capable of responding effectively to a situation in society." Referring to "new realities" and to "current needs for criminal protection of the social values concerned", the RCC acknowledges the present-day more serious threats to human dignity, the democratic culture and constitutional democracy.

Although the Court upheld the constitutionality of the law also in Decision no. 356 of 17 July 2025, published on 25 November 2025, the former has not yet been promulgated.

4. Conclusions to Keep the Discussion Open

In 2025 the RCC introduced into discussion human dignity, value of democratic society, of the rule of law state and the foundation of constitutional democracy, as requiring increased protection against the acts covered by GEO no. 31/2002 and Law no. 157/2018, thus justifying amendments and supplements thereof found constitutional because in accordance with the ECtHR's case law on limits of freedom of expression in relation with art. 17 ECHR, and also with the proportionality test. Moreover and notably, the RCC, as a first, cited the ECtHR on the notion of defensive democracy linked to art. 17 ECHR, thus contributing to a dialogue on human dignity in the logic of defensive liberal democracy in a much more significant manner than in its previous case law on GEO no. 31/2002, in which the Court only briefly invoked human dignity when rejecting the claims of unconstitutionality. The RCC's positioning in 2025 is beneficial for raising awareness on the importance of human dignity in Romanian society and as a step forward in making its protection more effective. The fate of the application of OG no. 31/2002 and Law no. 417/2018 in their new form remains to be seen.

We will further examine in a more extensive approach in what capacity human dignity was envisioned in Decisions no. 355 and 356 of 2025, considering also previous constitutional case law and using the functional perspective according to which dignity has three functions in legal argumentation, interpretation and adjudication - source of human rights, objective value, and relative individual right (Horak, 2022, p. 241), in order to observe the logical coherence and convincing character of the RCC's reasoning. The efficient protection of human dignity against acts that thereby threaten liberal constitutional democracy depends considerably on it, but also on all the participants in the dialogue through which we build the cultural, political and legal sense of human dignity. This paper aimed to contribute to this dialogue, including by joining the views that promote human dignity as a normative principle justifying the defense of liberal democracy as a means to the end of equally defending and protecting human beings.

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LEGAL STATUS OF THE GRAVE AS A SITE OF MEMORY: A HUMAN DIGNITY PERSPECTIVE

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Abstract: *The grave serves two functions: it is a physical resting place and it is a symbolic site where funerary monuments preserve the deceased's memory. Viewing the grave through the lens of human dignity, the paper explores the rights of the dead and the living by addressing whether the deceased enjoy a post-mortem right to preservation of their memory through their grave, and whether the living possess a continuing right to maintain and curate the grave as an act of care and remembrance. It concludes by calling for statutory frameworks that treat the grave as a protected space where human dignity persists through memory conveyed by the funeral monument and the interrelated rights of the dead and the living are upheld.*

Key words: *personality rights, post-mortem dignity, cemeteries, graves, memory of the deceased.*

1. Introduction

As debate has turned to the fate of digital remains (Harbinja et al., 2025), headstones in graveyards bearing the names of the dead seem to have faded from view. Even so, the grave serves two functions: a physical resting place housing the deceased's remains and a symbolic site where funerary monuments preserve their memory. Unlike online memorials that drift across screens and servers, the grave's stone and soil can be touched, weathered and returned to – a weighty locus of memory rather than an ephemeral feed. Against this backdrop, this brief analysis explores the interrelated rights of the dead and the living. It asks whether the deceased have a post-mortem right to the preservation of their memory through their grave, and whether the living possess an ongoing right to maintain and curate the grave as an act of care and remembrance.

To explore these questions, the discussion considers two illustrative case studies – an interfaith heterosexual couple and a same-sex couple – and examines (i) the possibility of *joint burial* and (ii) the *surviving partner's retention of the grave concession*. These cases are particularly revealing, as they expose tensions between personal autonomy, equality, and traditional conceptions of burial rights.

Taken together, these case studies highlight situations in which established legal and cultural norms, often rooted in religious tradition, come into conflict with the partners'

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wishes, thereby raising broader questions about how the law accommodates diversity in family forms and belief systems.

In this context, the Parliamentary Assembly of the Council of Europe (2012, p. 1), specifically when addressing the protection of Jewish cemeteries, has considered 'that there is a responsibility to protect human dignity in a broader sense by ensuring that deceased persons are preserved in their place of burial in a manner compatible with their religion'. By parity of reasoning, that responsibility extends to ensuring that the deceased are interred in accordance with their expressed wishes alongside their loved ones, without discrimination on grounds of religion or sexual orientation.

Accordingly, the discussion situates claims to joint burial and the preservation of grave concessions within a broader framework of human dignity, understood as protecting both the deceased's memory and the continuing bonds maintained by the living. This framing is all the more compelling, since the right to dignity endures after death alongside the imperative to respect the peace of the dead, and the protection of the deceased is grounded in that right (Jugastru, 2013, p. 86). Moreover, infringement of a person's dignity can lead, to a greater or lesser extent, to exclusion from everyday social life, (Ungureanu & Munteanu, 2015, p. 66), a concern that likewise extends into the afterlife, particularly in the treatment of the dead.

2. The Shared Grave as a Post-mortem Right of the Deceased

Romanian law – specifically Law No. 102 of 8 July 2014 on cemeteries, human crematoria and funeral services – does not expressly regulate joint burial. However, the statute requires those entitled and funeral service providers, when determining the final resting place, to take into account any wishes expressed by the deceased during their lifetime. It also obliges cemetery owners to draw up regulations governing the organisation and operation of their cemeteries. Accordingly, any answer regarding joint burial must be sought in the relevant cemetery regulations.

Given that about 90% of Romanian cemeteries are owned by recognised religious denominations – most of them belonging to the Romanian Orthodox Church (Tilkin, 2013, p. 71) – and that there are even municipality-status towns (whether of national importance with potential influence at the European level / inter-county or county importance / serving a balancing role in the settlement network) that do not have a public cemetery (Şchiopu, 2025, p. 135), it is necessary first to examine the 2020 Cemeteries Regulation within the Romanian Orthodox Church.

The regulation adopted by the Holy Synod of the Romanian Orthodox Church (Decision No. 11,943 of 9 - 11 December 2020) provides, for *parish cemeteries*, that:

a) Applications for the concession of a burial plot may be submitted by no more than two persons, both of whom must jointly meet all of the following conditions: they must be members of the Romanian Orthodox Church and must be either spouses or blood relatives of each other up to and including the fourth degree. Exceptions may be granted under Article 7. [Article 20(3)];

b) In special cases, with the *approval of the Parish Council*, persons of other faiths may, by way of exception, be buried in the parish cemetery, subject to the conditions

laid down in Article 47. [Article 7(2)];

c) In Orthodox parish cemeteries, deceased non-Orthodox believers may only be buried where the denomination to which they belonged has no cemetery of its own in that locality and there is no communal or municipal cemetery. Such burials must take place in *separate plots* designated by the Parish Council. [Article 47(1)–(2)].

In light of the foregoing, the prospects for an interfaith couple to be buried together in the same grave or plot within an Orthodox parish cemetery are minimal. Under the applicable regulation, the interment of a non-Orthodox spouse is permissible, if at all, only by way of exception (Articles 7 and 47) and is contingent upon the approval of the Parish Council; even where authorised, such interment is confined to separate plots or sections designated by the Council. Accordingly, joint burial in a single plot is, as a practical and regulatory matter, largely ruled out in Orthodox parish cemeteries.

Other non-Orthodox cemetery regulations allow such burials. For example, the Regulations governing the administration of the cemeteries of the Roman Catholic Parish of Saint Michael in Săcele - Turcheş (2013) provide that, in the case of a mixed marriage, a deceased family member who belonged to another denomination may also be interred in the family grave (Article 4.3).

As Romanian law does not recognise a general post-mortem right to a shared grave for interfaith couples, any such entitlement depends on the regulations of the cemetery in question. Because most cemeteries are owned by recognised religious denominations – predominantly the Romanian Orthodox Church – the governing rules are typically confessional. The result is a patchwork in which the feasibility of a shared grave turns on cemetery ownership and local regulation rather than any uniform statutory guarantee.

An interfaith heterosexual couple may still find a confessional cemetery willing to accept them, although in Orthodox parish cemeteries this means separate plots. By contrast, the position of a same-sex couple is markedly worse: Romanian law recognises neither same-sex marriage nor civil unions. This leaves them unable to prove spousal status and thus undermines any prospect of coordinated burial – even though co-ordinated burial and funeral arrangements in general are core rights relevant to any couple in a stable and committed relationship (Şchiopu, 2023, p. 58).

From a human-dignity perspective, the grave as a site of memory should secure the deceased's relational identity by honouring wishes for a shared resting place; yet, in Romania, this interest lacks any general legal guarantee and remains contingent on confessional regulations and local discretion.

3. The Grave as a Relational Right of the Living

Having considered the shared grave as a post-mortem right of the deceased, the analysis now turns to the position of the living: whether – and on what legal basis – the surviving spouse or partner may retain the grave concession.

In cemeteries belonging to the Romanian Orthodox Church, the relevant provisions are as follows:

a) Article 48(2): Where the sole concession-holder, or all concession-holders, of a burial plot renounce their membership of the Romanian Orthodox Church, the

concession right ceases;

b) Article 23: (1) The concession right over burial plots allocated for unlimited use may be transferred only by donation or by legal or testamentary succession (Annex No. 5). (2) The donation of burial plots allocated for unlimited use may be made only between spouses or to blood relatives up to and including the fourth degree.

c) Annex No. 5: Persons who are not of the Orthodox Christian faith may not acquire a burial plot for unlimited (perpetual) use.

Accordingly, a non-Orthodox surviving spouse cannot succeed to the perpetual concession over the deceased's grave: Annex No. 5 bars non-Orthodox acquirers altogether, and Article 48(2) conditions the concession on continued Orthodox membership. Even if the surviving partner in a same-sex couple were Orthodox, they could obtain the concession only by testamentary succession – not by donation – because Article 23(2) permits donations of perpetual burial plots solely between spouses or blood relatives up to and including the fourth degree, and Romanian law does not recognise same-sex spouses; by contrast, Article 23(1) allows transfer by will, provided the legatee is Orthodox.

However, Article 82^1(1) of Law No. 71 of 3 June 2011, implementing Law No. 287/2009 on the Civil Code, provides that rights over burial plots/graves in cemeteries, acquired in accordance with the law, are transferable, regardless of their legal nature, by succession and by gratuitous *inter vivos* acts. In addition, other non-Orthodox cemetery regulations permit transfers irrespective of membership in the faith community. For example, the Regulations governing the administration of the cemeteries of the Roman Catholic Parish of Saint Michael in Săcele - Turcheş (2013) provide that, where the family's Roman Catholic line of descent is broken, the relatives may continue to hold the concession of the burial plot solely for the purpose of honouring the deceased, but they may not use the grave for the interment of any other persons (Article 4.5).

Viewed through the lens of the grave as a relational right of the living, Article 82^1(1) of Law No. 71/2011 affirms the survivor's interest in retaining or receiving the grave concession by succession or gratuitous *inter vivos* acts, whereas the Orthodox cemetery regulation subordinates that interest to confessional membership and kinship filters – thereby curtailing survivors' stewardship of the site, especially non-Orthodox and same-sex partners.

4. Towards a Dignity-Centred Legal Framework

As the community's reverence for the departed is not intrinsically linked to any one religion or belief system (Manea, 2021, p. 62), that reverent regard should likewise be afforded to those who did not belong to, or fully conform to, such precepts. The shortcomings of the current legal framework become particularly apparent when set against the case-law of the European Court of Human Rights – most notably the judgment of 14 December 1999 in Serif v Greece (no. 38178/97), in which the Court held that '[t]he role of the authorities … is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other'.

Just as the post-mortem control of user data by social media platforms is a matter for

legislators, who must strike a delicate balance between the competing interests of deceased users, their heirs and the platforms (Conti, 2022, p. 41), so too, in funeral matters, it falls to legislators to design a pluralism-respecting framework that ensures mutual tolerance between church authorities and individuals.

Having regard to Article 5(2) of the Framework Convention for the Protection of National Minorities (ratified by Romania through Law No. 33 of 29 April 1995, published in the Official Gazette No. 82 of 4 May 1995), the new framework should expressly prohibit, in funeral matters, any policy or practice that seeks to assimilate, against their will, persons belonging to confessional or sexual minorities, and should protect them from indirect forms of coerced assimilation (e.g. pressure to convert to Orthodoxy or to conform to heterosexual norms).

One author has asked whether it is legitimate that the burden of ensuring pluralism in funerary practices should rest to such an extent on the initiative of private individuals, potentially only after lengthy litigation (Christians, 2019, p. 46). From a human-dignity perspective, it is not: the state bears positive obligations to secure pluralism proactively through clear, general and non-discriminatory rules and effective administrative remedies, rather than leaving individuals to vindicate their rights only after protracted litigation; nor should families be compelled to relocate the deceased outside their town merely because local public authorities have failed to discharge their obligation to establish and maintain public cemeteries.

Ultimately, a dignity-centred framework would give binding effect to the deceased's choices, guarantee non-discriminatory access to burial and concession rights, and place the duty to realise pluralism on the state—not on grieving families.

5. Conclusions

If human dignity requires leaving the dead undisturbed in a manner compatible with their religion, it likewise – by parity of reasoning – requires respect for the deceased's expressed wish to lie with loved ones and, at least where this honours those wishes, for the surviving partner's retention of the grave concession. This is not a shift from religion to preference but from one facet of dignity to the full set at death – autonomy, identity and relational life – so religion should not be privileged over other protected characteristics. Equal concern and respect demand that interment be arranged without discrimination, including on grounds of religion or sexual orientation, even where the only burial places are church-owned cemeteries.

Graves are repositories of remains and durable sites of memory; safeguarding place, monument and access for the bereaved sustains the 'continuing bonds' the law should recognise and enable. Digital memorials may complement these practices but cannot substitute for the tactile, place-based functions of headstones and plots.

For interfaith and same-sex couples, this entails equal access to joint burial and to the transfer or renewal of grave concessions, and – where a de facto partnership is shown – regardless of marital status. What is at stake is the dignity of the dead and the bonds of the living; the law should honour both.

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PRIVATE LAW PATHWAYS TO HUMAN DIGNITY

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SOCIOLOGICAL AND LEGAL ASPECTS OF THE CONCEPT OF "HUMAN DIGNITY" IN EMPLOYMENT RELATIONS

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Abstract: *In this article, we will analyze the sociological and legal aspects of the concept of human dignity within employment relations, beginning with a brief historical overview of the notion of "human dignity" and continuing with an examination of how this concept is reflected in labor legislation and case law. Although in employment relations the employee is required to carry out the instructions given by the employer, the Romanian Labour Code nonetheless protects the employee by stipulating that he or she benefits from "respect for dignity [...] without any discrimination," granting "the right to dignity at work." This means that while all human beings are born free, if their dignity is not recognized, they cannot live in complete freedom.*

Key words: *human dignity, fundamental value, labor relations*

1. Introduction

It is necessary to begin this study with the concept of *human dignity*, but not before uncovering the etymological meaning of the word *"dignity".* The term originates from Sanskrit, where *dec* means *"glory"* or *"renown,"* and from Latin, *dignus,* meaning *"distinguished",* includes the latin expression *"Laudare aliquem pro dignitate"* (Sava-Mirea, 2019, pp. 16–20) or *"worthy."* In Latin, there is also a superlative form of *dignus*—namely *dignissimus*—which signifies *"the most worthy".* The Latin noun *dignitas, dignitatis*, had two principal meanings: *"price"* or *"value,"* and *"the quality of being worthy, meritorious, esteemed, or honored"* [2] (Cornu, 2014, p. 346.). For example, in the expression *"laudare aliquem pro dignitate,"* the term did not always mean *to praise someone because he is worthy,* but rather *to praise him for his good reputation*—that is, for being a person of high standing, an important dignitary, a personality who enjoys, by virtue of his achievements and merits, a high reputation, prestige, and recognized fame (Rotaru, 2016, p. 33).

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In that historical context, this quality belonged only to individuals who either held a public office or reached a level of excellence in a particular field as a result of exceptional personal qualities or abilities (Donnely).

The current meaning of the term *"human dignity"* was shaped by Kant (1724–1804), one of the great philosophers of the Enlightenment. He gave a new significance to the Latin word *dignitas*, defining it as an absolute value, inherent to every human being:

"*All persons, regardless of rank or social class, possess an equal intrinsic worth or dignity. Human dignity is an innate value or status that we have not earned and cannot lose. Rather, we must strive to make our individual choices worthy of this moral standing, which elevates us above animals and mere things* […] (Kant, 2003, pp. 214–245)".

Kant describes dignity as "an unconditional and incomparable value" that "admits of no equivalent". Although lawmakers of his time did not incorporate this concept into legal norms as understood by Kant, after the two World Wars this interpretation of human dignity became widely accepted and remains authoritative today. It has been adopted and enshrined in all major international, European, and national legal frameworks (Sava-Mirea, *op.cit.*, p. 19).

Hodson defines dignity as the ability of a person to have a sense of confidence and self-respect and the respect of the others around him /her (Hodson, 2009, p. 3).

Currently, several authors assert that human dignity represents "an indeterminate legal standard, centered on the idea of respect—both in terms of the attitude through which a legal subject demands respect from other participants in social relations, and with regard to their general obligation to uphold the essential values that individualize the human person, without which one would lose self-respect. (***Encyclopedia of Romanian Law, 2021, p. 143).

2. The Meaning of the Concept of "Human Dignity" in Employment Relations

In any employment relationship, the employee has the obligation to carry out the orders received from the employer, who is legally entitled to issue them.

The employer possesses the authority to manage, to regulate, and to exercise disciplinary prerogatives (Ştefănescu, 2003), since he has the right to establish the rules governing the organization and operation of the workplace, to define the tasks assigned to each employee, to issue binding instructions, to supervise the fulfillment of professional duties, and to identify disciplinary offenses and apply sanctions in accordance with the law, the collective labor agreement, and internal regulations. The employer also has the right to set individual performance objectives (Article 40 of the Labour Code).

The employee, on the other hand, enjoys all the rights guaranteed by the *fundamental law*, including: the right to dignity at work, the right to physical and psychological integrity, the right to privacy (For more details on this aspect, see Dimitriu, 2011, pp. 36–45), and the right to freedom of expression (which encompasses the right to association, the right to collective bargaining, and the right to strike). In exercising the prerogatives listed above, the employer is under the obligation not to infringe upon any of these rights of

the employee — from the moment of recruitment and employment until the termination of the labor contract (For further details, see Gîlcă, 2014).

Respect for dignity at work implies (Dimitriu, *op.cit.,* pp. 43-45): the prohibition of all forms of discrimination based on sex, ethnicity, or sexual orientation; the assurance of equal opportunities between men and women regarding access to employment, equal pay for equal work, promotion, working conditions, and benefits; the prohibition of moral or psychological harassment (also known as *mobbing*); and the employee's prerogative to claim and obtain moral damages in cases where his or her non-patrimonial rights have been violated. In conclusion, the worker's human quality must take precedence over any other circumstance that may arise during the performance of professional duties. The fact that the employee is in a position of subordination to the employer should never diminish his or her intrinsic human essence (Dimitriu, *op.cit,*, pp.43-45). As one author aptly noted, "to care for a person's dignity means to ensure that he is not constantly forced to prove his dignity" (Pleșu, 2011, p. 46, cited in Dimitriu, *op. cit.*, p. 45).

2. The Recognition of the Concept of "Human Dignity" in International, Union, and National Labour Law

The *Universal Declaration of Human Rights*, signed in Paris on December 10, 1948, by the member states of the United Nations, consecrated for the first time the term *"human dignity"* within legal and institutional language. Its Preamble states that "the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family […] is the foundation of freedom, justice and peace in the world". Furthermore, Article 1 provides that "all human beings are born free and equal in dignity and rights". The same document establishes in Article 23 that "everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity."

Gîlcă, in his study "Dignity at Work", explains that the universal right to social dignity is defined through specific rights (Gîlcă, 2014) outlined in the *International Covenant on Economic, Social and Cultural Rights* of 1966 (was ratified by Romania through Decree no. 212/1974, published in the *Official Bulletin of the RSR*, no. 146 of November 20, 1974), which likewise states in its Preamble:

"The States Parties to the present Covenant, considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and recognizing that these rights derive from the inherent dignity of the human person".

The *Charter of Fundamental Rights of the European Union* (published in the Official Journal of the European Union, C 326/391 of October 26, 2012), signed in Nice (the Treaty of Nice), devotes its very first title to the theme of dignity, simply entitled *"Dignity."* It regulates this concept through five articles. Article 1, titled *"Human Dignity,"* stipulates that *human dignity must be respected and protected; it is inviolable.*

It is noteworthy that the drafters of the Charter placed *human dignity* before the *right to life*, which appears in Article 2, thereby emphasizing that dignity constitutes "the cornerstone of the theory of human rights*" (*Ungureanu & Munteanu, 2014, p. 9.) Finally, Article 31(1), entitled "Fair and Just Working Conditions," provides that "Every worker has the right to working conditions which respect his or her health, safety, and dignity."

The Revised European Social Charter (Strasbourg, May 3, 1996) in point 26 of Part I, provides that "all workers have the right to dignity at work". Furthermore, Article 26, entitled "The Right to Dignity at Work", stipulates that:

"With a view to ensuring the effective exercise of the right of all workers to the protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organizations: (1) to promote awareness, information, and prevention in the area of sexual harassment in the workplace or in connection with work, and to take all appropriate measures to protect workers from such conduct; (2) to promote awareness, information, and prevention of recurrent reprehensible or explicitly hostile and offensive actions directed against any employee in the workplace or in connection with work, and to take all appropriate measures to protect workers from such conduct".

It should be noted that all these international provisions also apply to migrant workers (Dinu, 2021, pp. 249-254; Iancu, 2015, pp. 1-18; Ștefan, 2015, pp. 540-544; Cliza, 2018, pp. 89-99). Following the same principle, the Constitution of Romania, as revised and republished, also provides in Article 1 that "Romania is a State in which human dignity, the rights and freedoms of citizens [...] are supreme values" (for more details about this concept see Anghel, 2015, pp. 103-113). In the context of the right to work, specialized legal literature notes that, within employment relations, provisions such as Article 39(1)(e) of the Labour Code establish the employee's right to dignity at work as an application of the constitutional provision on human dignity found in Article 1(3) of the Constitution.

4. The Recognition of the Concept of "Human Dignity" in the Jurisprudence of the Constitutional Court of Romania

Given that the legislator employs the concept of *"human dignity"* in a broader sense, it has fallen to the jurisprudence of the Constitutional Court of Romania to distinguish the notion of *"human dignity"* from other forms or manifestations of dignity. The term *"dignity",* in its broad meaning, concerns both natural persons and legal persons, whereas the expression *"human dignity"* refers exclusively to natural persons, as provided in Article 1(3) of the *Constitution of Romania* and as interpreted by the Constitutional Court in several of its decisions.

Thus, in Decision no. 1109 of September 8, 2009, the Constitutional Court affirmed that *human dignity* is a concept applicable solely to natural persons, since only they enjoy the fundamental rights and freedoms of citizens—values that are based on human dignity and the free development of human personality, as provided by Article 1(3) of

the Constitution—thereby recognizing the human nature of the individual (Kinga & Károly, 2021).

This idea was reaffirmed by the Court in Decision no. 1576 of December 7, 2011, where it stated that "Human dignity is an inalienable attribute of the human person, a value that imposes itself upon every member of society", and that "it is an intrinsic value of the human being, having the same significance for each individual". Rizoiu notes that there exists an area of objective law that legal persons cannot access, since it belongs exclusively to the human being as a natural person (Rizoiu, 2024, p. 109). In Decision no. 465/2019, the Court further held that "human dignity not only has a declarative value and is not devoid of normative content; on the contrary, it has a normative value" and that it constitutes "the foundation and essence of fundamental rights and freedoms".

Therefore, in the jurisprudence of the Constitutional Court, the concept of *human dignity* is not regarded as a stand-alone subjective right, but rather as a fundamental guiding principle, a "supreme value of the State" (Kinga & Károly) which "cannot be evaluated in monetary terms nor compensated through material benefits" (Decision of the Constitutional Court of Romania no. 62 of January 18, 2007).

In Decision no. 464 of July 18, 2019, the Constitutional Court of Romania ruled that: "Within the meaning of human dignity, the human being must be the purpose and subject of the State's action, not its means or object. Therefore, the State cannot subject a person to treatment that negates his or her legal status and quality as a subject of law, as this would amount to a disregard of the obligation to respect the human essence of the individual. Any state conduct that calls into question the subjective existence of the individual, or any abstention in a particular case that results in the arbitrary disregard of human dignity, is contrary to human dignity. Hence, any actions or omissions that aim at or result in the disregard of the individual's human existence, humiliation, stigmatization, persecution, ostracism, outlawing, or the application of degrading treatment are incompatible with human dignity". A human being cannot be viewed or treated as an object by public authorities or by legal persons with whom he or she is in a relationship of subordination, but rather as a subject of law whose human dignity must be protected.

In conclusion, according to the jurisprudence of the Constitutional Court, human dignity constitutes a supreme value of the State, which is inviolable and inalienable, and serves as the source of the entire spectrum of fundamental rights and freedoms. Moreover, it possesses a normative character and content, deriving from its legally binding force (Kinga and Károly).

5. Sociological Aspects of Discrimination in the Workplace

In Romania, the discrimination of women persists both within the family sphere (approximately one in five women are homemakers) and in society at large, notably through wage discrimination in certain professions.

According to the *Gender Barometer*, the income gap between women and men remains significant: data from the surveyed sample show that men's earnings are, on average, twice as high as those of women. Moreover, the proportion of women without

any income is four times higher than that of men. Women tend to have shorter employment histories than men, as they are often employed in sectors where wages are lower, which in turn generates economic dependency on men's income (Pasti and Ilinca, 2001, p. 71).

A study entitled *"Specific Phenomena of Workplace Discrimination: Mobbing",* highlights one of the causes of women's economic marginalization and exclusion- namely, their low political representation. This persists despite the fact that Romanian legislation provides clear provisions guaranteeing equal opportunities between women and men, equal rights for all citizens regarding access to employment, and equality in the distribution of benefits and career advancement (Gheondea et al., 2010, p. 20, pp. 131–140). Visible forms of discrimination occur particularly at key moments, such as recruitment, retention, and promotion within the workplace (Popescu Ljungholm and Tolbaru, 2025, pp. 47–62).

In 2025, the survey *"DigitalHR Barometer: Gender Discrimination Still Present in Romania"***,** revealed that out of 222 respondents, 125 confirmed that significant gender-based differences persist in both career advancement and remuneration practices.

Another form of discrimination based on sex is sexual harassment. For this reason, Romania has adopted specific legislation in this field — the most recent being Government Decision no. 970 of October 12, 2023, approving the *Methodology for the Prevention and Combating of Harassment on Grounds of Sex, as well as Moral Harassment in the Workplace*. Article 1 of this decision states that its purpose is "to ensure equal opportunities and treatment between women and men in employment and education, to specifically recognize each citizen's right to a work and educational environment free from violence and harassment, and to encourage and maintain a work culture based on mutual respect and dignity."

In conclusion, the topic of dignity at work remains highly relevant today.

Therefore, in the economic field, dignity at work is necessary from the moment of employment, by demanding a decent salary but also by the employer's respect for equal opportunities. At work, dignity is achieved through the employee's desire to be proud of the work they do every day but also by opposing possible abuses by the employer, through acts of resistance (Hodson, 2009, p. 3; for the same idea, see Nenu and Iordache, 2019, pp. 98–107).

De lege ferenda, we propose that this concept should be explicitly defined and incorporated into Romanian legislation in order to strengthen its normative clarity and social application, since with the emergence of new technologies the paradigm of how professional activities are carried out, the nature of jobs, and workers' obligations is changing. Digitalization, as well as Artificial Intelligence, bring major changes to the equipment and systems used for producing and delivering goods and services; therefore, workers must begin to reconsider the need to adapt and acquire new professional skills so that they can cope with new technologies, without, however, assuming that all these developments affect their sense of dignity in the workplace. Only by adapting can the risk that certain workers will be pushed out of the labor market be reduced (Nenu, 2025, pp.140–145).

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THE RIGHT OF PERSONS WITH DISABILITIES TO HAVE ACCESS TO SCIENTIFIC WORKS WITHOUT INFRINGING COPYRIGHT

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Abstract: *Copyright is an often ignored component within civil society, especially amid the use of social networks and the rapid transfer of data, information, images and music. However, society constantly benefits from scientific, literary and artistic works, experiencing a more harmonious development through them. Due to the importance and significant impact that such creations have on our lives, we must pay special attention to the protection of the copyright that accompanies them. Not infrequently, we have been confronted in our daily lives with the desire and the need to bring scientific, literary, artistic and even musical works closer to people with disabilities. Such an openness requires a certain form of manifestation of the work in order to be perceived by people with disabilities. We refer here, by way of example, to the written scientific work, inaccessible to blind people, and the need to transmit such a work to the blind by means of the Braille alphabet.*

Key words: *copyright, right of use, people with disabilities, social inclusion, non-discrimination.*

1. Introduction

The notion of copyright is enshrined in the doctrine (Macovei, 2010, p. 419) as having two meanings, on the one hand this notion can refer to the set of legal norms that refer to the relationships that arise from the creation and use of a work (Roș, 2016, p. 157), and, on the other hand, the same expression refers to the subjective right that belongs to the author, in the sense of patrimonial, civil law.

In the Romanian legal system, the main legal regulation regarding copyright can be found in Law no. 8/1996 which, in Article 1 paragraph 1, provides that the *object of legal protection is the work as an intellectual creation belonging to the literary, artistic or scientific field*; the phrase "work" is always assimilated in intellectual property law with the concept of originality (Coteanu et al., 1998, p. 722), creativity, and necessarily with the involvement of a human factor.

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In other words, no matter how often used are artificial intelligence systems in various fields but also in the literary field, the phrase literary, scientific or artistic work is incompatible with the idea of creating such a work by a computer program or by any other factor that does not involve human originality and creativity.

Starting from these notions, as well as from the initial regulation of the work in relation to copyright, as they were regulated by the Berne Convention (Dominte, 2024, p.10), we consider it important to define the notion of work not only in terms of national legislation but also in terms of European Union jurisprudence. In essence, the Romanian case-law refers to this case-law of the European Union, which, by the solutions rendered in cases *C-683/2017, Cofemel – Sociedade de Vestuario SA v G Star Raw CV and C-310/2017 Levola Hengelo BV vs. Smilde Foods BV* held that the following are defining elements of the concept of work:

- the existence of an original object in the sense that it represents an *intellectual creation proper to its author,*
- the qualification as a work is limited to the elements that are *the expression of such a creation* (Dominte, 2024, p. 316).

From the definition resulting from the motivation and argumentation of European jurisprudence, it follows that the notion of work is linked to 2 key words: **original and expression**, so that the creator of a work can be assimilated to a creator of expression (Murakami, 2016, taken from Dominte, 2024, p. 316).

2. Copyright. Object

2.1. Categories of works protected by copyright

We can say that the object of copyright is those original works of intellectual creation in the literary, artistic or scientific field, regardless of the form and manner of creation, mode or form of expression, regardless of their artistic value and destination (art. 7 of Law no. 8/1996) (Dinu, 2024, p. 343-348). This category of works includes literary and publishing writings, conferences, sermons, pleadings, lectures or any other written or oral works, as well as computer programs; scientific works, communications, studies and university courses, scientific projects and documentation, musical compositions with or without text, dramatic, choreographic, musical, cinematographic works, photographic works or graphic or plastic art, architectural works.

Although the above list is made by way of example, we mention the fact that in European jurisprudence, especially in a decision issued by the French courts in 1999, **the scent of a perfume was considered a creation,** French jurisprudence stating that it can benefit from copyright protection (Derclaye, 2006, p. 378).

In order to support the theme of this Conference, we propose to analyze in this article the situation in which certain works protected by copyright can be made accessible to certain categories of persons with disabilities who do not have the possibility to perceive the beauty of the work, to know the original and creative character of the work, except by transposing it into another format, accessible to some senses that the person may have.

In close connection with the topic researched in this article but also with the object of copyright, we consider it necessary to mention the fact that copyright protects not only original works but also derivative works, as they are regulated by Article 8 of Law no. 8/1996. Starting from the definition of the word **derivative**, we can reach a simple conclusion that such works are based on pre-existing original works. By way of example, we list from the category of derivative works translations, annotations, adaptations but also collections of literary, artistic or scientific works.

It is essential to note that a translation of a literary work into another language constitutes a derivative work, being also protected by copyright in the same way as the original work. Each translation is different simply because the translator gives a personal note on the translation made. *The perfect translator must be a writer capable of subsuming himself to the text and the identity of the greater writer,* argued J, Barnes in his book Through the Window (translated by Paraschivescu, 2014, p. 198).

2.2. Categories of Rights that arise from the mere realization of the work

I consider it essential to mention that, according to national law, from the moment of the creation of an original work, the law recognises the legal protection governed by copyright, without the need to fulfil any prior formality.

We make this clarification in order to compare the Romanian legal system, similar to the European one, with the American legal system in which, according to the Copyright Law, in order to benefit from the legal protection of the state regarding the work created by a certain person, the author of the work must perform certain prior formalities and register his creation. In the absence of such formalities, the American state does not grant the legal protection offered in the Romanian legal system (Bodoaşcă, 2024, p.32).

The provisions of Law no. 8/1996 refer to the fact that 2 categories of copyright are recognized in the patrimony of the author of a work or a literary, scientific or artistic creation: **patrimonial rights** (which refer to the right to use the work and the right of resale) and **non-patrimonial rights** (the right to disclose the work, the right of authorship over the work, the right to establish the name under which the work will become known, the right to the entirety of the work and the right to retract the work).

Moral copyright are absolute rights, inextricably linked to the person of the author, non-transferable and imprescriptible, not capable of being exercised by way of general representation (Roş, 2016, p. 284).

Essential within these moral rights is the fact that they cannot be transmitted through inter *vivos acts*, and the opinion of the doctrinaires is that they cannot even be transmitted through acts *mortis causa* (Bodoaşcă, 2024 p 55). The same doctrinaire considers that in the case of 3 of the 5 moral rights mentioned above, what can be transmitted is the exercise of these moral rights and not the right itself. It is about the right to authorship, the right to the entirety of the work and the right to publish the work (Bodoaşcă, 2024, p. 128).

Of particular relevance in the exercise of copyright, are the economic rights regarding the right to use the work and the resale right. The right to use the work is regulated by

art. 12 of Law no. 8/ 1996 and refers to the fact that the author of a work has the exclusive economic right to decide whether, in what way and when his work will be used, including to consent to the use of the work by others.

This right has a complex content given that the author of a work has at his disposal multiple prerogatives such as the use or non-use of his work, the establishment of the time at which it will be used but also of the modalities, the possibility of using his work by other persons, but also to benefit from the material and moral advantages deriving from this use, and last but not least, to oppose any misuse of the work by third parties and to resort to the coercive force of the state to respect these prerogatives.

The essence of the exercise of the right of use in relation to a work protected by copyright, mainly concerns the possibility of obtaining material advantages as a result of the use of that work both by the author and by third parties, so that when third parties wish to use the work of an author for the purpose of obtaining material advantages, they are obliged to obtain the prior consent of the author, and we also believe, must materialize the agreement in written form in the form of an assignment contract, which includes, in addition to the essential clauses (such as the exclusive or non-exclusive nature of the assignment, the duration of time and the territorial area in which the use by the assignee will be made) the remuneration due to the author of the work - assignor within the assignment contract, and its agreement in favour of the third party assignee to use the work under the conditions set out in the contract.

3. Cases of Restriction of Copyright Use

In Articles 35-39 of Law no. 8/1996, the legislator provides **for the limits of the exercise of copyright,** referring to those situations and conditions that third parties must meet in order to use or transform a work without payment of remuneration and without obtaining the author's prior consent.

Starting from the phrase used by the legislator, **the limits of the exercise of copyright,** we observe and opine that the term limitation is not an appropriate form used by the law given that this term is used mainly when the doctrine discusses the general limits within which a right can be exercised, expressly referring to public order and good morals (Gh. Beleiu, 2001, p. 85).

By the regulation of Articles 35 to 39 of the Aegean Law no. 8/1996, we consider that the legislator envisaged rather a restriction of the use of these copyrights, given that in this situation it is not a question of express observance of public order and good morals, but of certain situations expressly provided by the legislator in which, third parties may use or even transform a work, without the prior consent of its author, and without being obtained by the payment of any remuneration.

3.1. General conditions for the restriction of copyright

If we discuss the general conditions in which third parties can use the work without the consent of the author(s), they must refer, cumulatively, to the following:

- The work has previously been brought to the public's attention,

- the use is in accordance with good practice,
- the use does not contravene the normal exploitation of the work,
- the use does not prejudice the author or the holder of the right of use,
- third parties indicate the source and the name of the author.

Of all the situations expressly provided for by law in which third parties may use a work without the author's consent and without payment of remuneration, in compliance with the conditions set out above, we will stop to investigate in this article **the reproduction, distribution, broadcasting or communication to the public, without a direct or indirect commercial advantage or financial gain, in cases of use for the benefit of persons with disabilities, where such use is directly related to that disability and limited to the extent required by that disability.**

In this situation, the reproduction of a work is determined by its use for the benefit of people with disabilities, hence this text mainly covers scientific works such as studies, projects or scientific documentation.

Therefore, not every artistic, scientific or literary work can fall within this category, which is regarded by both the legislator and legal doctrine as an exceptional situation aimed at restricting the exercise of a civil right – namely, the right to use a work. Being an exceptional situation, expressly regulated by law, we consider that this is a situation of strict application and interpretation, and cannot be extended to other situations not provided for by the legal text.

If we talk about the category of persons and their situation who can benefit from the above-mentioned exception, it should be noted that the disability consists of a sensory, motor or mental deficiency, and that given that the legislator does not expressly provide for the nature of the disability affecting the beneficiary of the exceptional rule, the interpreter will not do so either. I consider that the essence of the application of this exceptional situation lies in *the direct link that exists between the specificity of the work and the nature of the disability of the beneficiary of that rule.*

If we discuss, as an exception, the situation **of the blind**, we find various online associations that advocate for the respect of the rights and social inclusion of people suffering from such a disability. According to some websites (https://www.orcam.com/ro-ro/blog/asociatii-si-organizatii-care-ajuta-persoanele-nevazatoare-sau-cu-deficiente-de-vedere?srsltid=AfmBOopZFwNHU9JNhAfuWoXAoktUx13yrrWyC_4Y9U2ZbZ425xwpbNs), such associations are concerned with providing braille textbooks, audio recording of materials from school bibliography, providing specific equipment and devices, promoting and involving visually impaired students in national cultural activities (music, literature, translations, etc.).

Thus, we find this exception from the use of copyright necessary, welcome and in accordance with all the European principles that Romania has undertaken to guarantee to its own citizens, in order to ensure good social inclusion, in order to ensure equal opportunities for all people, and in order to ensure respect for human dignity.

The jurisprudence of the European Court of Human Rights has always been in agreement with the inclusion of persons with disabilities and the openness of

institutions to the particular needs of individuals, in the sense of non-discriminating against them. By way of example, I note that in the ECHR case, *Çam v. Turkey, (no. 51500/08, 23 February 2016, discussed in section 4.4.3, paragraph 67),* with regard to the refusal of a music academy to enroll a student on the grounds of his or her visual impairment, the ECHR established that the State had not taken positive measures to ensure that students with disabilities could benefit from education in a non-discriminatory manner.

The ECHR noted that discrimination on the basis of disability also encompasses the refusal to provide appropriate accommodation (e.g. adapting teaching methods to make them accessible to blind students) (text taken from the Handbook on European Law on Non-Discrimination, 2018, p. 85 and p. 145)

In the case of Çam v. Turkey, the ECtHR found that the refusal of a music academy to approve the enrolment of a student on account of her visual impairment, despite the fact that she had passed the entrance examination, violated Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1. The ECtHR emphasised that Article 14 must be interpreted in the light of the European Social Charter and the UN Convention on the Rights of Persons with Disabilities as regards the appropriate accommodation to which persons with disabilities were entitled to expect.

The ECtHR pointed out that the competent national authorities had made no effort to identify the applicant's needs and had failed to explain how or why her blindness might hinder her access to music education. The music academy also did not try to adapt its educational approach to make it accessible to blind students (chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-handbook-non-discrimination-law-2018_ro.pdf).

The need for the above-mentioned legal provision, which has the sole purpose of protecting the interests of people suffering from a disability, is all the more necessary in Romania, given that, according to the latest reports, banks sometimes refuse to open bank accounts for blind people on the grounds that they cannot read the contract.

Even if they are not deprived *de jure* of legal capacity by interdiction, there are persons who are de facto deprived of the possibility of concluding civil acts due to other legal, administrative or attitudinal barriers. Decisions in everyday life often also require the conclusion of civil acts. People with disabilities frequently face various types of barriers in trying to reach legal agreements. People with disabilities have the right to manage their financial resources, but this is not always respected.

For example, banks sometimes refuse to open bank accounts for blind people on the grounds that they cannot read the contract, refuse to issue bank cards to people with disabilities or conclude credit contracts when they consider that the person is not able to make decisions (Diagnosis of the situation of people with disabilities in Romania, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://anpd.gov. ro/web/wp-content/uploads/2023/01/Diagnoza-situatiei-persoanelor-cu-dizabilitati-in-Romania.pdf).

The CNCD decided that such a situation violates the right of the person concerned to have equal access to banking services, on the basis of disability (CNCD Decision no. 97/07.03.2018). The curator of the person with disabilities had to go to the bank in

person to make withdrawals and operations from the account. Through the treatment in question, the banking unit created a hostile, degrading environment, and the act represents harassment against the person with disabilities, the account holder, but also its curator (https://www.cncd.ro/wp-content/uploads/2020/12/hotarare-97-18_dosar-598-17_h_II_Constatareamenda-5000-lei-recomandare.pdf).

In order to remedy these forms of discrimination, art. 12 para. (5) of the CRPD calls on States Parties to take appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to manage their own income and to have equal access to bank loans, mortgages and other forms of financial credit, and to ensure that persons with disabilities are not arbitrarily dispossessed of their property.

4. Conclusions

In the light of the above, we consider that the legal provision of art. 35 para. 2 letter e) of Law no. 8/1996, comes to ensure in a legal, unitary and fair manner, the possibility of access for blind people, or for people suffering from another disability, to education and information.

As mentioned above, that exception concerns the fact that, insofar as the conditions set out above are complied with, third parties have the possibility of using scientific works, transforming them, transcribing them into Braille and thus making them available to blind persons in order to ensure that persons have access to scientific information, education, with full respect for their right to non-discrimination and social inclusion.

We consider that, in such situations, even the notion of restricting the exercise of the right to use a work appears to be excessive, given that these scientific works, studies, projects and documentation, should be accessible to all citizens, regardless of whether one or more of their senses are affected by certain deficiencies.

Therefore, we consider that the interference with the author's right of use of the scientific work or with the copyright holder's rights regarding the scientific work, is in this context not only necessary but also moral, in order to guarantee and respect all individual rights and freedoms of all citizens of the Romanian state.

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PATIENTS' DIGNITY. UNEQUAL ACCESS TO MEDICAL TREATMENT

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Abstract: *This article examines how unequal access to medical treatment generates systemic discrimination and undermines patients' dignity. Although Article 3 of Law 46/2003 on patient rights guarantees respect for all persons without discrimination, patients belonging to vulnerable groups, such as ethnic minorities, disabled persons, or older persons, continue to face structural barriers that restrict their access to adequate medical care. The analysis assesses both the national and European legal frameworks, highlighting the mechanisms through which financial, linguistic, and infrastructural barriers perpetuate implicit discrimination.*

Key words: *patient rights, discrimination, dignity, inequality*

1. Introduction

Equal access to healthcare transcends matters of institutional and administrative management, serving as an embodiment of the respect owed to human dignity. In a state governed by the rule of law, every individual seeking medical assistance should be entitled to an equivalent standard of professional attention, empathy and care, irrespective of the socio-economic background, ethnicity, language, age, or beliefs.

Despite the universal endorsement of equality in healthcare, its implementation and functionality vary significantly across countries. Pronounced disparities are particularly visible when comparing healthcare systems in developed states with those in developing ones. In India, for instance, entrenched social hierarchies and gender-based prejudice continue to generate discriminatory practices, which can be observed in a considerably higher percentage of infant mortality rates in females. It is important to acknowledge that these outcomes cannot be solely attributed to healthcare systems, as they are also heavily influenced by societal attitudes inconsistent with the ethical standards of the 21st century.

Although the principle of non-discrimination is incorporated in the laws and regulations of most countries, imposing sanctions of varying severity for discriminatory conducts, the phenomenon remains widespread in practice. One underlying cause of the persisting discriminatory treatment is the difficulty of punishment due to the evidentiary

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requirements. Furthermore, the inherently subjective nature of discrimination, which originates in individual attitudes and social practices, makes it challenging to be prevented. The Romanian system, although advanced in terms of existing services, continues to generate profound inequalities, often manifested through subtle or invisible barriers: inadequate communication, limited cultural responsiveness, discriminatory attitudes, or lack of institutional protection mechanisms.

At the European level, empirical evidence indicates that discrimination in access to healthcare is multifactorial and should not be ascribed to a single determinant. According to the European Agency for Fundamental Rights (FRA), more and more people are facing "multiple discrimination" resulting from the interaction of several factors: ethnicity, age, gender, disability, etc. (Bobbia, 2024, p.190). These intersecting factors create complex patterns of marginalisation, which are resistant to legal and institutional actions, posing significant obstacles to an equitable healthcare system.

In Romania, patients belonging to national minorities often encounter specific forms of discrimination. The lack of healthcare professionals fluent in the languages spoken by these people, or the absence of translators to ensure effective communication, constitutes more than a logistical limitation, being a violation of the patient's right to information and, by extension, their dignity. The patients' incapacity to comprehend or convey information regarding their diagnosis causes them to become passive participants in their own care, undermining the effectiveness of medical treatment. Such circumstances unavoidably result in the violation of patients' dignity at a moment of utmost vulnerability—during illness.

2. Conceptual and Legal Framework

2.1. Dignity – (Non-)discrimination

Within the medical field, human dignity is not an abstract ideal, but a fundamental right, which requires healthcare professionals – including doctors and nurses – to provide care that embodies certain characteristics, such as respect, empathy and equality.

The World Health Organization (WHO) defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". In contrast, discrimination represents a fundamental violation of dignity. Morar (2015) conceptualises discrimination as different treatment or unjustified deprivation of certain rights based on unfounded criteria. Horta (2010) emphasizes that the occurrence of discrimination does not require concrete harm, as it is sufficient that an individual is treated less favourably than others on the basis of an arbitrary criterion. Consequently, when a patient experiences discrimination—regardless of the specific criterion—they are entitled to compensation for the violation of their dignity.

The European Economic and Social Committee (Muscalu, et al. 2024, p. 38) asserts that the right to dignity, as a fundamental patient right, inherently includes the principle of non-discrimination. This principle obliges healthcare professionals to treat patients with respect and not subjected to derogatory remarks or prejudicial attitudes.

2.2. European legal framework

The European legal framework protects human dignity and enshrines the principle of non-discrimination. Relevant provisions include:

- Article 14 of the European Convention on Human Rights requires signatory states to ensure that everyone can exercise the rights and freedoms recognized by the convention without any distinction based, in particular, on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.
- The Treaty of Lisbon prohibits discrimination on grounds of race, ethnic origin, religion, age, disability, or sexual orientation.
- The Charter of Fundamental Rights of the EU states in Article 1 that "human dignity is inviolable" and in Article 35 enshrines the right to preventive healthcare.
- Directive 2000/43/EC ("Racial Equality Directive") provides for the applicability of these principles including in healthcare services. This was transposed into Romanian law by Government Ordinance No. 137/2000.

2.3. The legal framework in Romania

In Romania, the principle of non-discrimination is enshrined in the Constitution. Article 16 of the Constitution guarantees equality before the law, prohibiting privileges or discriminatory treatment, and its inclusion in the fundamental law was intended to emphasize its significance in safeguarding the dignity of every individual.

The principle is also reflected in medical legislation, with Article 3 of Law No. 46/2003 on patient rights stipulating that: "The patient has the right to be respected as a human being, without any discrimination", and Article 650 of Law No. 95/2006 requires medical staff to respect the dignity, privacy, and cultural values of patients. These provisions show that without dignity, the right to life and physical integrity remains purely formal.

The Romanian law imposes sanctions for any violation of healthcare professionals' obligations, which may include disciplinary, administrative, civil, or criminal penalties. The concept of malpractice encompasses both violations of medical duties, such as the administration of inappropriate treatment, and breaches of ethical obligations, including inadequate provision of information, failure to obtain informed consent for medical procedures, and discriminatory conduct.

3. Discrimination Criteria and Vulnerable Groups

Vulnerability reflects an individual's exposure to risk and a lack of adequate support. Popescu (2009) highlights that factors contributing to vulnerability may include membership in a stigmatised group, disability, advanced age, or poverty. Romanian Law No. 292/2011 on social assistance defines vulnerable groups and includes in this category individuals or families at risk of losing their capacity to meet daily living needs due to illness, disability, poverty, drug or alcohol addiction, or other situations that lead to economic and social vulnerability. Within this framework, our analysis illustrates and

discusses several specific situations that can be identified in which patients' dignity is compromised.

One primary factor contributing to discrimination is poverty. Individuals from low-income backgrounds, including the homeless and children in state care are economically vulnerable and among the groups most affected by discriminatory practices. In these cases, discrimination may manifest directly—for instance, when individuals are denied access to emergency services or other hospital wards due to their bad physical condition or hygiene, which may elicit negative reactions from medical staff or other patients —or indirect, for example, being referred to other hospitals on the grounds of unavailable beds, appointments, or specialists.

People living in poverty are often perceived as "inferior" and consequently experience limited access to healthcare services. As Tomescu (2010) notes, people from disadvantaged backgrounds use medical services less frequently across European countries.

Ethnic minorities constitute another category that is particularly affected by discrimination, being relatively prevalent in Romania. According to the European Union Agency for Fundamental Rights (FRA, 2011) individuals belonging to ethnic minority groups are five times more likely to experience discrimination. In healthcare, Ziegler (1976) illustrates that although professionals have an ethical obligation to protect patients while preserving their dignity, the subjectivity and personal biases of the medical staff often cause discriminatory behaviours, which, in turn, can significantly alter the mental well-being of patients being already vulnerable due to illness.

The Roma represent one of the most stigmatized ethnic minorities and stereotypical attitudes among healthcare professionals are often observed in clinical practice. These biases frequently lead to dismissive or superficial medical services, particularly in obstetrics-gynaecology and paediatrics, reflecting stereotypes that Roma families have more children than those of majority population. A notable example involves a case in which a doctor refused treatment to a pregnant Roma woman, reportedly stating: "What's wrong with you? That's how g*psies are -," illustrating the persistence of prejudice and its impact.

As Birau (2018, p.44) observes, the condition of the Roma population in Romania involves social stigmatisation, despite the fact that being one of the country's largest minority groups, they benefit from social welfare programs aimed at preventing discrimination.

The situation in Romania is not an isolated one. At the European level, stereotypes that generate discrimination against ethnic and national minority groups have become increasingly prevalent, particularly in the current context of large-scale refugee inflows from Africa and Asia. In France, for instance, an article published earlier this year in the prominent daily *Le Monde* describes the so-called "Mediterranean syndrome" (France, 2025), a phenomenon in which medical professionals presume that patients of North African or Black origin exaggerate their pain. This assumption often leads to superficial clinical assessments and the dismissal of reported symptoms, a behaviour that can, in some cases, have fatal consequences.

With regard to the activity of the state authorities responsible with preventing and combating discrimination, the 2024 activity report of the National Council for Combating Discrimination (NCCD, 2024) indicates that 5.5% of the complaints received concerned ethnic discrimination, while 8.3% were based on nationality. The most common cited grounds for discriminatory conducts in the complaints addressed to the national authority were social status (19.8%) and disability (8.8%). However, these figures suggest an improvement in public services, taking into account that in 2010 complaints based on ethnic discrimination represented 20% of all submissions to the NCCD.

People belonging to minority groups are subject to be discriminated against not only on the grounds of entrenched prejudices, but also as a consequence of linguistic barriers. In this regard, Article 13(2)(c) of the European Charter for Regional or Minority Languages requires signatory states to establish the necessary legislative framework to enable citizens from the national minorities to use their mother tongue in their interactions with certain public institutions.

In 2018, Romania amended Law No. 95/2006 on health reform to ensure compliance with the Charter, namely that, "to the extent that public authorities are competent in the area where regional or minority languages are used and if this is possible [...] ensure that social institutions, such as hospitals, nursing homes, and shelters, offer the possibility of receiving and caring for speakers of a regional or minority language who require care for reasons of health, age, etc., in their own language." Article 7(m) of Law No. 95/2006 requires medical institutions in areas with national minorities representing 20% of the population or at least 5,000 residents to provide specialized medical staff speaking the language of that particular minority.

The legal provision was challenged before the Constitutional Court on grounds of both extrinsic and intrinsic unconstitutionality. The claim of extrinsic unconstitutionality rested on the argument that an ordinary law cannot amend an organic law, while the claim of intrinsic unconstitutionality alleged a violation of constitutional guarantees of non-discrimination, as the employment of specialists proficient in a minority language would shift hiring criteria away from professional competence and toward considerations of nationality, ethnicity, or language. In Decision No. 328/2017, the Constitutional Court rejected the challenge, stating that the contested provision does not require the employment of individuals from the respective national minority, but, in essence, stipulates that the medical staff hired must possess knowledge of the relevant minority language. Accordingly, the Court concluded that no breach of the constitutional principle of non-discrimination had occurred.

To emphasise the need of effective communication with patients belonging to national minorities or other vulnerable groups, such as refugees, the National Council for Combating Discrimination sanctioned a medical institution in Timișoara after three children of Hungarian ethnicity being examined and treated there received incomplete prescriptions and medical care, due to the fact that the responsible professionals did not speak Hungarian. A similar situation, which is more and more frequent, is that of the Ukrainian refugees, who have settled in large numbers in Romania since the start of the war.

People with severe mental disorders, such as schizophrenia, alienation, or mental retardation, face stigmatisation from society in general and medical staff in particular. Very often, the inhumane or degrading treatments seriously affect their rights and even their quality of life (Burtea and Mosoiu, 2018, p.108). The phenomena documented by the cited authors in the specialised hospital in Brașov are similarly observed in other European contexts. According to Cersosimo (2015, p.90), the institutional discrimination identified in specialised hospitals in southern Italy can be prevented through collaborative agreements between public and private social and medical services. However, the education of patients and their families is a more effective solution than solely enhancing the technical capabilities of medical institutions. Among the most serious forms of discrimination which is committed against them, is the prescription and administration of treatments without informed consent, exploiting the impairment or complete absence of their decision-making capacity.

The elderly represents another vulnerable group, facing both direct and indirect discrimination, commonly referred to as “ageism” and which results in the denial of costly medical interventions for older individuals, based on the perception that such treatments may be an unnecessary expenditure of time and resources which could be allocated more efficiently to younger patients. Such refusal of treatment, together with other breaches of medical ethics, establishes the legal liability of healthcare professionals for these violations (Jugastru, 2017, p.47).

An example of discrimination was highlighted in a recent case settled by the Bucharest Fourth District Court (decision 7447/2025 published on rejust.ro). The action was brought by the daughter of an elderly patient, who stated that her mother was denied necessary diagnosis and treatments due to her advanced age, causing her death shortly after hospital admission. The court dismissed the claim of the plaintiff, as no evidence of ethical malpractice could be proven, especially because the patient suffered from multiple comorbidities that were more likely to have caused her death, rather than the inappropriate medical care. As pointed out by Oană (2021, p. 12), Western healthcare systems, in order to optimise resources allocated to medical care, have used the practice of discontinuing interventions for extremely ill or dying patients.

Another category of patients exposed to discrimination is represented by people with different sexual orientations. These individuals are often discriminated against and, more seriously, as Spârchez (2023, p.139) states, discrimination can also affect children from such families, especially since same-sex marriage is prohibited in Romania, and same-sex marriages or partnerships legally concluded abroad are not recognized. Evans (2005) shows that doctors are influenced by their own perceptions and prejudices. LGBTQ+ patients, especially those with HIV/AIDS, have limited or no access to surgical and dental procedures, transportation for bleeding patients, or C-sections for HIV-infected pregnant women. For these individuals, in addition to the disease itself, the consequences of discrimination can be even more severe and hurtful.

4. Final Considerations

Discrimination, regardless of the criteria, is present in many areas of social life, its

effects being more serious when it occurs in the healthcare system because it affects people who are already vulnerable due to illness. Although there are effective legal mechanisms against discrimination, such as disciplinary or even criminal sanctions against medical or auxiliary staff, fines, and civil damages, in many cases discriminatory attitudes and practices go unpunished or are insufficiently punished. There are many reasons for this, including:

- insufficient information provided to the population on procedures for identifying or sanctioning discrimination, largely due to the low level of education among the poor or certain minority groups;
- humiliation and fear of society's reaction;
- economic reasons;
- inability to act – this usually occurs in the case of elderly or mentally ill people who cannot defend their rights on their own;
- solidarity among medical staff - if the people discriminated against limit themselves to filing a complaint with the professional body of the physician, the misconduct is investigated by people within the profession who often adopt a self-defensive mechanism and a subjective attitude that results in discrimination and insufficient sanctions or no sanctions at all;
- if the individuals discriminated against go beyond the scope of these bodies and turn to civil or criminal justice, the procedures are time-consuming, and their duration is a factor that causes many people to give up appealing to state institutions to punish acts of discrimination in the healthcare system.

One solution for preventing and reducing cases of discrimination would be the active involvement of medical staff through specific courses and seminars, but also through media coverage of the psychological consequences of discrimination on vulnerable patients and the penalties imposed on those who have committed such acts. The role of healthcare professionals is essential in guaranteeing access to quality healthcare. They are often responsible for determining who can access medical treatment and what types of treatment can be offered.

I conclude by recalling an idea that is worth mentioning in the context of discrimination, which is a tendency that every individual can encounter. The Museum of Tolerance in Los Angeles has two entrances, the first inscribed with "prejudiced" and the second with "not prejudiced". Those who consider themselves qualified to enter through the second door will find that it is always closed, as a reminder that, in reality, we are all exposed to discriminatory behaviour.

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LEGAL MEANS OF PROTECTING HUMAN DIGNITY IN THE DIGITAL ERA

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Abstract: *This paper aims to present how to adapt social relations, through law, to the digital age, focusing on how to share legal liability, especially tort liability, between content providers and hosting service providers. Human dignity continues to be protected, both through the application of traditional means of law and through detailed regulations at European level, such as the Digital Services Act.*

Key words: *Digital Services Act, protection of dignity, civil liability of the service provider.*

1. Introduction

One of the fundamental concepts of law is that of dignity. Without going into details on the content of this particularly complex notion already analyzed in the literature (Sava-Mirea, 2019, p.22; Sâmboan, A. U. D. 2012), I shall consider the legally relevant meaning, which requires the defense of the person primarily because of his or her status as a person, as a subject of law (Sava–Mirea, 2019, p. 27).

The dignity of man has the value of an international principle, affirmed as such in a number of documents. Thus, in the Fundamental Declaration of Human Rights of 1948, dignity was mentioned, along with freedom, as a value - the foundation for these rights. References to this notion include the preambles of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Although such a right is not enshrined in the text of the European Convention on Human Rights, so that its existence in its own right cannot be retained, the notion of 'human dignity' plays a key role in the interpretation and application of the protection afforded by the other rights of the Convention. On the other hand, at European level, Article 1 of the Charter of Fundamental Rights of the European Union expressly states that 'Human dignity shall be inviolable. It must be respected and protected". The constitutions of several Member States expressly refer to the right to dignity, either merely as a supreme value or in relation to other rights, such as the rights of personality.

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Obviously, however, at the constitutional level we find principles, foundations that determine the subsequent activity through which they are integrated and articulated in the specific legislative systems. However, we are currently going through a period globally that is often referred to as the 'digital age' or the information age, characterised by the ability to access and transmit information without the classical limitations of time and space. Since the primary function of law is to regulate social relations, it is natural that the constant concern is to analyze how it evolves in concrete terms and, more precisely, what are the legal instruments through which the principle of human dignity, enshrined at constitutional and international level, takes on a form directly applicable to legal relationships.

Thus, we would point out that the term 'digital rights' is already used in the literature, which are usually seen extensively in several aspects, such as an extension, an extension of human rights to the use of new technologies, a framework for evaluating initiatives and policies on new technologies, or as a basis for preventing cases of 'injustice' caused by the use of new information technologies (Robert, 2025), whether it includes new rights, such as the right to be forgotten, the right to a secure digital environment (Custers, B.H.M. 2022).

There is, however, agreement that already recognised rights can serve as the current basis for ensuring a level of protection applicable also to the digital sphere in which we live.

What are the means by which such protection can be achieved and what are the challenges posed by the new extended limits of communication? Who is responsible for any damage caused?

As far as the Internet is concerned, the classic variant is that of incurring civil liability in tort for the damages caused, by awarding damages and/or by removing defamatory posts or by other means, such as the publication of the court decision. Thus, this is not an action for a declaration (of an unlawful act), but an action for enforcement, an action for civil liability in tort seeking to remove non-material damage by ordering the defendant to cease the infringement of rights and/or compensation for non-material damage caused by the defendant by infringements of the applicant's rights (pecuniary liability).

2. Determination of Jurisdiction

A first challenge is to determine whether we can speak of the existence of a jurisdiction, consisting of the jurisdiction of a court to hear a case and give a decision.

Generally, disputes relating to the Internet involve an international element, which raises the question of whether or not there is territorial jurisdiction, which will have to be decided by the domestic courts in the light of one of the principles of private international law applicable to jurisdiction. However, the ECtHR holds that it cannot be ruled out that situations in which the act complained of is outside national territory may fall within the 'extraterritorial jurisdiction' of the State in the light of the Convention.

The decisive factor is the exercise of effective power and control by the Member State outside its national territory. Thus, in Perrin v. the United Kingdom (ECHR, 2005), the applicant, a French national residing in the United Kingdom, was convicted of having published an obscene article on a website. This site was operated and controlled by a

company based in the United States of America, which complied with all local laws and in which the interested party was the majority shareholder. The ECtHR accepted the reasoning of the UK court that limiting the jurisdiction of the UK courts in the matter to cases where the place of publication was within their area incited publishers to publish in countries where they would have little chance of being prosecuted. The Court also ruled that, as a British resident, the interested party could not argue that the laws of the United Kingdom were not reasonably accessible to him. In addition, he pursued a professional activity with his website and could therefore reasonably consider that it was for him to exercise great caution in that context and to obtain the necessary legal advice. Although the dissemination of the images in question might not have been unlawful in other States, including States not party to the Convention, such as the United States of America, that did not mean that by prohibiting such dissemination in its territory and prosecuting and convicting the interested party, the respondent State exceeded its discretion. Thus, the Court declared the application manifestly unfounded within the meaning of Article 35 § 3 of the Convention.

Furthermore, the ECtHR has stated that, where a case falls within the jurisdiction of the courts of the State concerned by the request, the Court cannot take the place of the domestic courts of that State. The Court did not grant the request of an applicant who claimed before it that the courts should have applied to the facts of the case other texts, in particular the provisions of European Union law relating to Internet service providers. The position of the European Court of Human Rights is clear: it is not for it to rule 'on the appropriateness of the techniques chosen by the legislature of the defendant State to regulate a particular field; its role is limited to verifying that the methods adopted and their effects comply with the Convention' (Delfi AS v. Estonia (MC), Application No. 64569/09, para. 127, 16 June 2015).

As regards territorial jurisdiction at national level, between national courts, in matters relating to civil liability in tort, the legislature may establish an alternative territorial jurisdiction, as is the case under Romanian law, under which the applicant may bring the action either at the defendant's domicile/registered office, pursuant to Article 107(1) of the Code of Civil Procedure, or at the court in whose jurisdiction the tort/delict was committed or the damage occurred, in accordance with Article 113(1)(9) of the Code of Civil Procedure. In the case of alternative territorial jurisdiction, under Romanian law, the applicant has the choice between several courts equally competent (Article 116 C. civ.proc).

Given that dissemination via the Internet presupposes that the information can be accessed by any person with access to it, we consider that the criterion relating to the 'place where the act was committed' remains of no legal relevance. As regards, however, the criterion relating to the 'place where the damage occurred', it has been stated in domestic case-law that it has jurisdiction to hear the case of the court in whose jurisdiction the damage to the protected social value occurred, that is to say, the direct damage, which, in the particular circumstances of the case, in which damage is claimed to have been caused by the dissemination in a virtual environment of defamatory images of the applicant, is represented by the court of the applicant's domicile (I.C.C.J., First Civil Division, Decision No 1541 of 24 June 2021).

3. Civil (delictual) Liability of the Author of the Post/repost

In the case of civil liability in tort, the 'classical' offence consists in making a defamatory post or defamatory statements on the Internet or on a social network. In this situation we find, for example, posts made on a blog, on an Internet site, on Facebook, Instagram, Tik-tok, etc.

As a rule, the responsibility belongs to the author of the post, and in this category, we include all posts, both those made on a site (or blog) owned by him, as well as posts made through hosting service providers. In this situation, the wrongful act consists in posting content that infringes the legitimate rights of a person, with the possibility of accessing it through online means.

Therefore, for example, if we find denigrating images/videos faked with the help of another person, and the latter did not know the illicit purpose for which the result of the computer intervention was to be used, the responsibility lies with the person who disseminated the fake images/videos in the public space.

By contrast, the taking of messages, regardless of their content, from the social page of another "unidentified" person is not such as to exonerate the person who merely retransmits, in this manner, the messages because they are "about the opinion of the original author of the post".

In reality, the person who takes the messages and perpetuates them, multiplies them, by relaying them in the online space, is responsible for their content and for any negative, denigrating consequences that could be passed on to other people, on an equal basis with the original author of the post.

This is because, by assumption, the person who takes over the messages of another post acts with discernment, adhering to their content, which he considers, for various reasons, to be relevant, capable of being passed on and of reaching as many recipients as possible.

Therefore, a person who merely retransmits messages on social networks, considered to be a public space, cannot invoke an exemption from liability for his actions, if they would infringe the rights of someone else, since the liability is personal and he also commits himself to the original author of the post and to those who, appreciating and endorsing the content of those messages, retransmit them in such a way as to reach as many recipients as possible (see ICCJ Decision No 2509/6 December 2023 Civil Section I).

4. Obligations and Liability of the Hosting Service Provider

If we find content generated by users of a hosting service (including a platform), beyond the incurring of tortious liability of the author of the post, can we also find the incurring of liability of the hosting service?

As a general rule, the hosting service provider shall not be liable for user-generated content unless it becomes aware of the illegality and does not act expeditiously to withdraw or disable access to it as soon as it becomes aware of the illegality of the posting.

In regulatory terms, that rule was laid down in Article 14(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market, which provided, in essence, that the provider of the storage service was not responsible for the information stored at the request of a recipient of the service, provided that: a) the supplier is not aware of the illegal activity or information and, as regards actions for damages, is not aware of facts or circumstances from which it appears that the illegal activity or information is manifestly illegal or b) the supplier, from the moment it becomes aware of them, acts promptly to remove the information or to block access to it.

Similarly, the prerequisite for prior notice and conduct of the hosting service provider is clear from the CJEU judgment C-18/18. In that case, the applicant was a former Member of Parliament, chairman of the Greens Parliamentary Group and spokesperson for that party. A Facebook user shared on his personal page an article from an Austrian online information magazine entitled 'Greens in favour of maintaining a minimum income for refugees', which had the effect of generating on that page a 'miniature image' of the website of origin, including the title of the article, a short summary of the article and the photograph of the applicant. That user also published, in connection with the article, a denigrating comment against the applicant. The post was public.

The applicant requested Facebook Ireland to delete that article, which it did not do. Subsequently, the applicant brought proceedings against Facebook Ireland before the Austrian courts and the court of first instance, by an interim order, ordered Facebook Ireland to cease, immediately and pending the final outcome of the injunction proceedings, the publication and/or dissemination of photographs of the applicant in the main proceedings, if the accompanying message contains the same statements or information with a content equivalent to the impugned comment. Facebook Ireland (which manages the Facebook platform for users outside the US and Canada) has blocked access to the information originally published in Austria. The appellate court upheld the decision of the court of first instance, but held that the dissemination of information of an equivalent nature was to cease only in respect of information brought to Facebook Ireland by the applicant, third parties or otherwise. On appeal, the court asked the CJEU about the interpretation of Article 15(1) of Directive 2000/31.

In response, the CJEU stated that Directive 2000/31/EC allows a court of a Member State to order a hosting service provider to remove information which it stores and the content of which is identical to that of information previously declared unlawful or to disable access to it, irrespective of the author of the request to store that information. Similarly, that directive allows a court of a Member State to order a storage provider to remove information which it stores and the content of which is identical to that of information previously declared unlawful or to disable access to it, in so far as the monitoring and search for the information generated by such an injunction is limited to information conveying a message the content of which remains essentially unchanged from that which led to the finding of unlawfulness and which contains the elements specified in the injunction, provided that the differences between the initial and subsequent message are not such as to compel the provider to carry out an independent assessment of the content. Nor does the Directive preclude a national court from

requiring the supplier to remove the information to which the injunction relates or to disable access to it worldwide under the relevant international law.

Also, in the light also of that decision, I consider that it is possible that storage service provider be required to remove the information it stores whose content has been declared unlawful, or to disable access to it, not only within the national territory but also on a large scale. At the same time, it may be obliged to remove/block access to similar information if it is reported by the injured party, by third parties, or by its own means, without, however, entailing a general obligation of supervision on the part of the provider.

From a procedural point of view, the action based on civil liability in tort may be brought simultaneously against the content creator (*lato sensu*) and against the hosting service provider, for the removal of illegal content or the disabling of access to it, as a remedy for the non-material damage caused. In this regard, we would also refer to Civil Section I of the HCCJ Decision No 679/19.03.2025, noting that, by court order, the 'principal' defendant was ordered to pay compensation for non-material damage both by paying non-material damages and by ordering him to remove the material containing the allegations found to be unlawful, published on the channel held on the network, as well as any references and references thereto, and that the 'secondary' defendant, as the holder of an audiovisual licence and owner of a news portal, was ordered to remove denigrating material from the public space.

The liability of the supplier may be incurred, including in the form of monetary compensation, if the measures taken by the latter following notification prove insufficient to protect the rights of the injured party. In support of that assertion, I refer to Delfi vs. Estonia, handed down by the ECHR, in which the European Court of Human Rights held that Delfi being ordered to pay compensation of approx. EUR 320 to the injured party complied with the requirements of compatibility with Article 10 of the ECHR.

Delfi was one of the largest news portals in Estonia, also operating in Latvia and Lithuania. One of the published articles received 185 comments, about 20 of which contained threats and insults to the injured party. By notification, the injured party requested the applicant company to remove the defamatory comments and to pay the amount of approx. 32,000 euros by way of compensation for non-material damage. Delfi deleted the insulting comments on the same day, six weeks after they were written. The injured party sued Delfi for compensation for non-material damage and, at first instance, the claim was dismissed, the court considering that there was a need to differentiate between the commentary field in the applicant company's news portal and the journalistic field of the portal; the applicant company's management of the first domain was mainly mechanical and passive; the applicant company could not be regarded as the publisher of the comments, nor was it under an obligation to monitor them.

On appeal, the judgment was set aside with a retrial, taking the view that Delfi could be held liable. In the retrial, the court of first instance upheld the injured party's claim, but awarded compensation in the amount of approximately EUR 320.

The High Court ruled on the appeal and classified Delfi in the light of the provisions of national law transposing Directive 2000/31/EC and the content of the Directive. It considered that Delfi's activities at the time the comments were posted were not of a purely technical, automatic and passive nature. Delfi's objective is not simply to provide

an intermediary service. It integrated the comments section into the news portal, inviting website visitors to add their own [hinnangud] judgments and opinions (comments) to the news. In this section, Delfi actively invites readers to comment on the news that appears on the portal.

The number of hits it records depends on the number of comments; the revenue from the advertisements displayed on the portal also depends on the number of hits. Thus, the publication of comments is of economic interest to Delfi. The fact that they do not write them themselves does not mean that they have no control over the comments section. They set the rules for this section and make changes to it (deleting certain comments) if the rules are broken. Users, on the contrary, cannot modify or delete the comments they have written. They can only report inappropriate comments. Thus, Delfi can select which comments will be published and those that will not be published. In other words, Delfi, which manages the data stored in the comments section, **provides a content service,** which is why the circumstances removing liability referred to in Articles 12 to 15 of the Directive (transposed into national law) are not applicable in the present case.

The European Court of Human Rights has held in situations such as that examined in the present case, where comments by third parties appear to be hate speech and direct threats to the physical integrity of an individual, **that, in order to protect the rights and interests of individuals and of society** as a whole, contracting States may be entitled to hold internet news portals liable, without this constituting a breach of Article 10 of the Convention, if the portals fail to take measures to remove manifestly illegal comments immediately after their publication, **even in the absence of a referral from the alleged victim or third parties.**

The above distinction is particularly relevant. It should also be noted, however, that in the above case, the comments had as mandatory fields the text of the comment and the name of the author (chosen by him), filling in the email address being optional. In those circumstances, identifying the authors of the denigrating comments was an almost impossible task for the injured party. We believe that in the opposite situation, where a field containing identification data of those who post comments is mandatory, we can also retain the possibility of an individual civil response.

It should be pointed out that the above-mentioned Directive 2000/31/EC was amended by the Digital Services Act 2022/2065 (DSA), which is directly applicable. It repealed the provisions of the Directive on the limited liability of the service provider, replacing them with much more detailed provisions that also take into account the scale of the provider.

The Regulation also defines ‘illegal content’ in Article 3(h) as ‘any information which, in itself or in relation to an act, including the sale of products or the provision of services, does not comply with Union law or with the law of any Member State which complies with Union law, irrespective of the precise subject matter or nature of that law’.

Although the court is in principle competent to declare content illegal, institutions such as ANCOM, CNCD or ANSPDCP are responsible for determining whether content is illegal, but only for a specific regulated area (e.g. ANCOM for video audio content, CNCD for discriminatory content, ANSPSPC for unlawfully processed personal data).

The Regulation qualifies online platforms as a sub-category of hosting service providers, and defines them, by not only storing the information provided by the recipients of the service at their request, but also disseminating that information to the public at the request of the recipients of the service.

Interpersonal communications services as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council, such as emails or private messaging services, fall outside the scope of the definition of online platforms, as they are used for interpersonal communication between a finite number of persons determined by the sender of the communication.

However, the obligations laid down in the Regulation for providers of online platforms may apply to services that allow information to be made available to a potentially unlimited number of recipients, not determined by the sender of the communication, for example through public groups or open channels. Information should be considered to be disseminated to the public for the purposes of this Regulation only where such dissemination takes place at the direct request of the recipient of the service that provided the information.

Thus, the Regulation sets out several avenues for the notification of illegal content. The first way is to notify the hosting service provider of the existence of information considered to be illegal content, and the hosting service provider is required to put in place mechanisms to take up such referrals. Those mechanisms shall be easy to access and use, allow, but not require, the identification of the natural person or entity submitting a notification, and allow for the submission of notifications exclusively by electronic means.

In the case of online platforms, it is also possible for trusted flaggers to inform them. A trusted flagger can be any entity (public or private) that demonstrates that it has specific expertise and competence in detecting, identifying and notifying illegal content is independent from any online platform providers and carries out its activities in such a way as to submit notices with diligence, accuracy and objectivity.

This status is granted by the Digital Services Coordinator of each Member State (in Romania, by ANCOM). Currently, the National Institute for the Study of the Holocaust in Romania 'Elie Wiesel', 'Save the Children' Organisation and the Foundation for Social Services are authorised as trusted notifiers in Romania.

Therefore, in the light of the foregoing, the question arises as to whether the prior notification of the host provider can be regarded as similar to a procedure prior to the application of the court, even if it is not enshrined in law at the level of the Member State of the European Union. In my view, the answer must be in the affirmative. At the same time, compared to the provisions of the Regulation, the prior notification can also be made by a trusted notifier (although, practically, they are less likely to have the physical capacity to report violations of the dignity of a private person). On the other hand, if the injured party has previously applied to another authority, such as the CNA, and the latter declares that content to infringe the applicant's rights and notifies the service provider, I consider that the respective requirement is satisfied.

In conclusion, the protection of the rights of individuals has clearly been extended, with alternative ways of referring the matter to the service provider to be regulated. It

follows from the text of Article 3(h) in conjunction with Article 52 of the Preamble to the Regulation that the protection and mechanisms established by the Regulation also extend to human dignity rights, including the right to image. The person thus becomes better protected, both as an individual and as a member of a particular race, nationality, etc.

5. Responsibility for comments posted in the online environment

If we are talking about the provision of hosting services or online platforms, the above considerations regarding the possibility of obliging them to delete/block access to those elements, which fall under the notion of 'illegal content', are applicable. We do not believe, however, that the hosting service provider or the online platform for comments posted by users can be held liable for pecuniary damages, which fall under the category of 'hosted content'.

Separately, however, the author of the post may be held liable in tort (including in the form of damages) if identified, including for comments made by third parties in response to the author's posts or comments. In this regard, we refer to the ECHR decision Pătrașcu v. Romania, in which, although a violation of Article 10 of the CEDH on freedom of expression was found, it was determined by the fact that the national authorities did not carry out a real balancing exercise to demonstrate that the civil judgment handed down against the applicant for the statements posted on his Facebook page (including by third parties) corresponded to an imperative social need and was proportionate to the legitimate aim pursued. It should be noted that an element held to be important by the ECHR in its reasoning in the judgment in Pătrașcu v. Romania was the behaviour of the injured parties, who did not inform the complainant in advance of their dissatisfaction before taking legal action. The facts of Pătrașcu v. Romania differ substantially from those of another ECtHR case, the judgment of 16 June 2015 in Delfi AS v. Estonia, in which the ECtHR found that Article 10 ECHR had been complied with, but there was prior notification of the person responsible.

Therefore, we can conclude that even if individual liability is requested, **it is necessary to notify in advance** the person who has the control over the content of the page. This becomes a substantive condition in the analysis of maintaining the balance between the competing rights provided for in Articles 8 and 10 of the ECHR.

6. Conclusions

The protection of dignity in the online environment is achieved by extending the already established reasoning and rules on finding a fair balance between the right to privacy and the right to free expression. In the European area, by adopting the DSA Regulation, we can speak of an extension of the protection granted to the rights of individuals by establishing clearer mechanisms for the removal of illegal content as soon as possible and establishing additional obligations on service providers, also taking into account their scale.

Apparently, there is a higher protection offered by means of the provisions of the CEDH as compared to the detailed provisions of EU "law", as the main issue is whether the measures taken to remove manifestly illegal comments, immediately after their

publication, are effective and are able to provide a real protection for the rights and interests of individuals and of society as a whole. Yet, we can notice a tendency to a congruent approach, through the adoption of the DSA Regulation.

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EUROPEAN REGULATIONS ON THE REGIME OF CASUAL WORKERS

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Abstract: *An extensive growth of casual jobs (temporary jobs, part-time jobs, self-employment) has been observed. Although trade unions have battled against employment itself becoming casual, the new forms of employment and their impact on workers and employment relationships are in the process of being understood. While trade unions are aware of this transformation, they are still seeking appropriate means to combat it. The main aim of the investigation is to study the forms of representation of casual workers in Europe.*

Key words: *casual workers, casual jobs, employment, trade unions.*

1. Introduction

In almost European countries, trade unions appear to be aware of the problems of representation of casual workers. However, much diversity exists with respect to organization and actual activities of representation/unionization.

This diversity seems to be related to various factors: a) different forms of casualization in public utilities and transport as compared with hospitality and agriculture, b) different levels of severity of casualization in the educational sector, c) involvement at different levels, and d) considerable differences with respect to the degree of convergence of features of casual employment of casual workers in different sectors, and in outcomes of unionization efforts. In addition, a global overview of problems, unionization efforts, conditions for success and relevant lessons is provided.

The ideal and very ambitious level of representation sought by trade unions for casual workers is that all of them must be unionized.

This would induce a concerted and powerful fight against casualization and probably also prevent the casualization of workers who are now in stable, permanent contracts. Still, even then, various 'lesser' forms of representation of casual workers would continue to be very relevant and desirable.

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2. Historical Context

Historically, aside from national representations, workers in the attempts to advocate for their rights and working conditions made a number of collective attempts at European level. One of the most meaningful steps was the first PanEuropean "Hired from the street" demonstration along the main roads of Brussels, where the European Commission has its headquarters, which took place on October 23, 2001, during the first European and then global wave 'No Global' demonstrations. A different circumstantial decision made this instance of mobilization very special: casual workers of all kinds would gather together under the generic name of 'precarious workers' (Murgia and Selmi, 2012). Thousands of demonstrations took place in Italy and all over Europe every week. After an encounter between Italian and French groupings of precarious workers, an Italian appeal specifically addressed to all precarious workers residing in any European country was launched, urging them to take part in the upcoming demonstrations in Brussels. The reflection was that without labor no resources could be extracted. The choice was to block entry to the central offices of the EU. Thousands of people rejected their bosses' wishes and boarded buses, trains, and any means of transportation.

In 2002, the London-based 'No Borders' network, a coalition of groups opposed to the EU and UK immigration policy, called for an international day of protests against what they term the 'Fortress Europe' that is gradually being erected against migrants and asylum seekers attempting to enter the EU. They realized the May Day March and were met with, what they claimed was, a brutal police response (Cervino, 2000). This theme caught on in many cities: all over Europe large protests were organized, where Italy joined them with two concurrent demonstrations, one in the north and one in the south, both heading for the major city of the respective regions, Milan and Naples. At both meetings, a Europe of rights was claimed, 'A Europe for everyone and not just the super-rich,' a rallying cry echoed in both critiques of the European Union and demands for migrant and labor rights. In 2004, upon the invitation of the local groupings, several representatives of the most informal precarity struggles arrived in Barcelona to attend the second European meeting of precarious workers. Each group shared their struggles and launched a call for international mobilizations starting May 2005.

2.1. Evolution of Casual Work in Europe

The article is grounded in a theoretical framework inspired by the varieties of capitalism literature. (Célérier et al., 2019) note that labor-on-demand is partly a product of the mainstream economy, and that regulatory regimes shape the degree of platform firms' embedding in the economy: "The incentive structure for a platform firm's executives, its stated policies, and the degree of integration with the realm of traditional economic activity – that is to say, the weight of activity governed by (some) law in the governance of activity – are crucial for obtaining a glimpse of the economic framework in which the firm acts." They specify several dimensions, with the focus on the proportion of the labor force working via platforms, and the political economy

dimension of whether firms are treated as tech companies or as labor market agencies. In light of these criteria, the authors identify three archetypes of platform governance regimes: 'emerging' governance regimes, present in a number of southern EU countries and elsewhere; 'hybrid' regimes, confiscating digitalization to develop welfare and places of support for workers and toil to the activity of platforms and their workers; and 'firm supported' regimes.

To synthesize a micro-perspective on the role of platforms in casualization, a theoretical lens on possible representations of platform workers is proposed. Five forms of representation are characterized. The disavowal of platforms by trade unions as employers and a call for tech provider regulation is the most common strategy. This position, formalizing the trade unions' historical fear of non-standard and non-official forms of employment, is associated with a dominant emphasis on the economic governance of platforms in the identified exploratory studies. The reader is confronted with political economy theoretical considerations challenging trade union discourse. However, it is concluded that the missing micro-foundational analysis lacks complementary insights as to workers' organizational responses to casual work. Alternatively to the first strategy, a number of second types of representations are distinguished within which workers or prospective workers themselves organize around the platforms for job visibility, requests or complaints, and to enhance a feeling of still belonging to the labor market.

2.2. Legislative Milestones

With regard to casual worker representation in Europe, an important milestone was the Convention of the International Labour Organization No 177 on Home Work, which was ratified in 1996. The Convention focuses on rights and standards for workers in the informal economy. No European Union regulation or directive has been created at the EU level that deals specifically with casual or platform workers. This legislation could help ensure minimum standards across EU countries and monitor compliance with them. Nevertheless, some EU member states have created national legislation to regulate labour relations in this sector. The law of the Netherlands, for example, requires companies and online platforms to keep records of their workers for tax and social security regulation. Spain's Digital Services Act obliges platforms to disclose data to ensure fair competition. Acts such as these highlight the need to regulate this sector of work.

Apart from the now very much debated gig economy, some forms of casual work do exist with a long tradition, notably, the agency work of temporary work agencies and homeworkers. This paper will look into their respective representations in five European countries: the Netherlands, Germany, Austria, France, and the UK. In these five countries, casual workers are represented in relation to agency work and home working, as well as in general by the European Trade Union Confederation and the local central trade union confederations, which try to act upon the standard-setting policies of the OECD and subsequently the European Union.

The representation of agency workers is more extensive than that of home workers. The agency work sector is already more adequately regulated, and in many EU countries there are collective agreements and dossiers in the bargaining process, while this is mostly lacking for homeworkers. In a more historical prospective, the representation of home workers emerged ten years earlier in 1986 than that of agency workers, which started in 1996. The representation of agency workers took on different forms compared to that of home workers. In the early years, the representation of agency workers focused on lobbying to ensure new legislation and supporting national trade union confederations and their affiliates. In the agency work sector, some initiatives were launched to set up European level collective bargaining. In contrast, the representation of homeworkers is very fragmented and lacks proper coordination.

3. Current Landscape of Casual Work

For some time now, it has been evident that the world of work is increasingly shifting from stable, full-time employment secured through calls for state intervention, union organization, and regulatory mechanisms, to temporary, casual, insecure, and often undocumented work, which is also generally informal. Many of those who would previously have worked in stable jobs are now 'crowdworking' for pay using telecommunications and multimedia technologies, algorithmic management platforms, and applications.

Against this backdrop of significant transformation, casual work is on the rise, and will soon appear as the dominant form of employment for some bordering on 70 percent of the world population. These casual workers may include migrant labour on non-registered farms, domestic workers paid in cash without contracts, students or pensioners supplementing permanent employment by means of a few hours' sporadic work on a task-organizing platform, or laboratory technicians paid for the hour by an agency after their permanent position was legally terminated.

Casual work is typically defined as work carried out on the benefits of the production process within a continuously defined time as measured with various devices. In economic terms, it would refer to the engagement of workers with short-term contracts giving rise to little job security and minimal real wage - that is, wages not adjusted for price-level changes - and social benefits. Various synonyms of it, such as fleeting, atypical, informal, and irregular, properly capture the different aspects of this extensive and inherently ambiguous phenomenon.

3.1. Statistics on Casual Workers

The widespread use of a public employment and wage platform (EPWP) by the national unions of workers aims to create a collective database of wages for the most common work contracts in various occupations. The adopted methodology for EPWP's development has been deeply influenced by an analysis of forms of employment, labor contracts, and workers' rights in Europe. The aim of this analysis is to illustrate how the conclusion of this analysis influenced EPWP's development and the representation of

the working contracts in the EPWP. Generally, most of the discussions on this analysis focused on how to classify the different forms of employment in general (Célérier et al., 2019).

Statistical sources on casual workers in Europe were compiled and clustered on the basis of the above considerations to sketch the representation of employees, self-employed contractors, and other non-standard forms of employment in the EPWP. The analysis outlined the bases for the construction of formalized and substantial indicatives of mapping and monitoring the situations of informal employment on both European and national scales. Based on this analysis, the national unions participating in EPWP needed to decide how to represent non-standard forms of employment and working and how much attention to casual work across Europe they wanted to pay. This decision on representation was made significant part. Eastern European countries with high casual employment were included among the eight countries participating in EPWP, while Southern European countries were excluded, most notably Greece and Portugal, despite their high casual employment. It was argued that it would be too hard to incorporate a variety of labor markets.

The topics of analysis of non-standard forms of working agree with the themes taken into consideration in relation to EPWP's representation of non-standard and casual workers on the level of forms of employment, working contracts, and economic sectors. Data were available on both formalized and substantial aspects of on-demand labor and labor platforms proposed both by classified and specialized sources. Sources on informal employment at a classification level almost completely matching with those built in EPWP were made available and tested.

The preliminary analytical work resulted in databased nations in the represented countries on both formalized and substantial aspects of casual work. The representation to EPWP on the situation of casual workers and working in general approach casual work on the level of employment/contract kind, sectors of employment/contract, and platform types on the basis published at a level of aggregation most comparable to other forms of non-standard employment.

3.2. Sectors with High Casual Employment

With some exceptions, the overall percentage of casual workers working more than 20 hours a week in the EU member states is relatively stable, with values ranging from 55% to 65%. Four countries deviate from this pattern: the most extreme case is Germany, where a high proportion of casual workers (70.7%) work less than 20 hours; Ireland is also in the lower region (39.3%); Italy is intermediate (48.7%); at the upper end is Sweden (73.2%) (Standing, 2018). The level of casualisation among women varies across countries. Except for Luxembourg and Germany, every other country shows higher levels of casualisation among women than men. The most extreme cases are Spain and Ireland, where female casual workers exceed their male counterparts by around 15%. Even in the UK, where the numbers of casual workers are not significantly different across gender, there is still a slight female majority.

The gender difference is only slight in six countries, including Germany, Finland, Latvia, Hungary, and Lithuania. The case of Germany is particularly interesting because the percentage of casual workers among the total employees is considerably lower than both in the EU-27 and EU-15, despite being the largest economy in the EU. In Ireland, the second lowest percentage of casual workers, almost half of casual workers work less than 20 hours.

Countries experiencing rapid economic growth have diverse outcomes. Casual workers are lower in quantity than in Italy, and the percentage of casual workers is also considerably lower than in mainland nations like Spain and France, although it is higher than in the Nordic region. This result partly reflects the less market-oriented approach towards labour forces in these countries. The level of casualisation in new member states is mixed: Poland has a very low percentage of casual workers and displays a lower level of casualisation across gender than in Slovakia or in the Baltic countries. Rentier economies like Estonia or Sweden have relatively high percentages of casual workers. Casual employment is relatively more common in the education and health sector than in manufacturing, construction, and public administration.

In Hungary, however, a large proportion of casual workers is concentrated in education and health. The overall distribution of casual employment across the three sectors is changing among the EU member states over time. Casual employment in manufacturing has declined significantly, while it has rapidly grown in accommodation and food services and education. In the last three decades, growth in casual employment in information and communication, construction, and public administration has been stagnant across countries. A negative fall in casual employment is noticed in mining and quarrying.

4. Forms of Representation

This chapter focuses on those forms of representation found in Europe that have garnered sufficient attention, need further scrutiny, and contain the most knowledge and experience. The discussion on European forms of representation is not exhaustive and further comparative research is warranted, but it offers a glimpse into the various approaches across diverse national contexts and in different sectors.

The most well-known and widely used form of representing casual workers in Europe is trade unions. The majority of the academic discourse and lobbying targeted at policymakers zeroes in on this form of representation. However, research focusing on trade unions alone is problematic and has been criticized. The established academic and political beliefs about trade unions bias perceptions about representations, shutting out alternatives.

Trade unions are regarded as quasi-monopolistic federally governed labor organizations existing within a predictable framework of autonomy, consistency, and regulation, which are mobilized by the working class to pursue collective interests. Such ideas frame the emotional practices of workers outside this conceptual representation as trivial. In contrast to this notion, unions are conceived as fragmented actors continuously mobilizing, counter-mobilizing, and conflicting. Such fragmentation reveals

possibilities for alternativity, conduction on micro- and nano-levels, with small units acting as global agencements. With regards to the topic, interests and trust must be contrasted with gain and loss, group boundaries and identities with a general basin, and casualization with self-employment.

Worker cooperatives are a form of economically integrating and representing casual workers that, for now, have garnered little academic analysis or activist attention. They exist, operate, and flourish under different national contexts and legal frameworks wherever single-person businesses are legally chargeable to VAT. In Europe, this organizing model is legally recognized and supported in various countries. These worker cooperative platforms generally integrate underscoring collectivities composed of independent self-employed workers, freelancers, and platform workers.

By remaining collective, these cooperatives advance the growth of a diversified set of economic alternatives, the construction of a collective identity, solidarity, and the capacity to take political action. Their multiplicity invites future research on comparing them beyond certain countries and generating trans-national exchanges and collaborations among activists. Despite quite diverse forms of cooperation and organizational models, informal coordination and support among casual workers across sectors and locations have become prevalent.

Unbeknown to authorities and experts alike, such networked modes of representation are largely present across Europe, taking multiple and diverse yet similarly fluid forms. The chapter concludes by stressing that this mosaic of forms of representation is highly dynamic and likely to further diversify and gain in importance. However, in the context of a new upward spiral of casualization, better regulating conditions of work are urgently needed.

4.1. Trade Unions

The rise of new forms of employment in Europe has affected the organisation and collective representation of workers. A large number of studies have analysed the impact of these changes on trade unions and workers' representation in Europe. The analysis has centered on atypical employment or non-standard employment, which refers to jobs with non-standard contractual arrangements (Cervino, 2000). There are many ways in which jobs can be non-standard.

The core non-standard jobs can be workers on fixed-term contracts, part-time workers, on-call or casual workers, freelancers, and self-employed. Precarious work is another label that is widely used in the literature to refer to uncertain, atypical, and cheap forms of jobs. These forms often concern work that is not recognized by the State or goes unrecorded. However, it is important to distinguish precarious work from atypical work. The rise of atypical work is a more general phenomenon amongst the countries of the European Union and there is a notable degree of similarities while the rise in precarious forms of work is more country-specific and distinguished by various variations in degree.

In order to understand the more general issue of the impact of new forms of employment on the representation of workers' interest, it is necessary to discuss first

how the new forms of employment are defined in the literature and how the forms of representation are conceptualized. It is first necessary to examine the evolution of atypical jobs in various European countries and how they affect the interests of workers in terms of their ability to collectively voice their interest in relation to wages and working conditions. There are many ways of analyzing the emergence of atypical jobs and their impact on the working conditions. However, it is not sufficient to assess how new forms of employment mean new forms of discontent amongst workers alone. It is also crucial to examine how they also affect the ability to process those discontents on behalf of workers and render them into a message of organised interest representation. In the third section, the focus would be on how trade unions' capacity of representation has changed and new ideas of representation are being put forward in response to the emergence of new forms of employment in Europe.

Finally, the last section would deal with case studies of two European countries, Italy and Malaysia, focusing on trade unions' capacity of representation and innovations of the latter in addressing precarity in their respective countries.

4.2. Worker Cooperatives

Worker cooperatives are formed by groups of individuals to produce goods or services collectively. These firms aim to maximize members' investment over the long-term, with worker control of financial and human capital producing lower wages, poorer conditions, and the hollowing out of productive capacity. Between the 19th and the early 20th centuries, worker cooperatives were prominent forms of association amongst manual, skilled, female and white collar workers in the UK, USA, Australia, parts of Europe and Latin America, although rarely in developing Asia and Africa.

By the 1960s the cooperative movement had become part of the cultural and political landscape of many societies, providing affordable housing and paving the way for social housing projects in cities. In Italy, factory takeovers were promoted in the Emilia Romagna region, mostly manufacturing plants.

In Argentina cooperativisation fed into wider tendencies of social movement unionism and multi-faceted insurgencies against neoliberalism, inspired by Anarchist, Marxist and other revolutionary traditions. Cooperatives in each locale were largely initiated by committed individuals hoping to break the stranglehold of commercial banks and provide lower rates of interest. In the global North, mainstream economic theory has traditionally viewed firms as 'black boxes' producing goods and services which analysis treated largely in quantitative terms. Little attention was paid to the choice of capital, whether conventional capitalist firms and 'land/knowledge market friendly' (KMF) businesses, municipal enterprises, cooperatives, or on how organization affected the type and quality of output.

Arguments were later posited against atomistic industry analysis in favor of family and relation-based models, alongside qualitative effects that emphasized single firms' behavior such as experimentation, innovation, industry evolution, cooperation between knowledge providers and users, strategic alliances and regional production webs. Such work has important empirical implications on cooperatives' ability to enter and remain

in major service and knowledge industries, where personal relations and tacit dimension growth speed impacts most. It is argued that skills should be seen as invested in and accumulated rather than as resources which modelled as given endowments, and through which other additional production inputs were mixed.

Still Guy, Williams, Wray and others have examined phenomena ranging from technological armies to accountant-led globalization to the emergence of the new knowledge economy, using explicit factors of production and output variables. Worker cooperatives are organizations primarily owned and controlled by their employees, existing for the mutual benefit of worker-members (Mannan, 2019).

4.3. Informal Networks

With respect to representation outside unions, many workers reported turning to informal networks, including relatives, friends, co-workers, or acquaintances looking for work. Social connections were sometimes more reliable than formal job-search resources because, without an established reputation or references, workers felt that they were less likely to be "seen" in the eyes of formal organizations. Colleagues were also turned to as potential sources of new information about jobs, particularly in precarious sectors such as food delivery and hospitality where vacancies are often filled via informal means (Murgia and Selmi, 2012).

For some, relying on informal networks was in part unavoidable to differing degrees, including being new to a city, lacking a network of acquaintances with knowledge of work opportunities, and speaking a language that posed a barrier. Others discussed informal networks as a resource they used in addition to formal job-search methods as it helped ensure that they were being informed about as many opportunities as possible. And while there were certainly some differences, on the whole, the informal networks report among precarious workers closely resembles reports in studies of framed workers.

5. Conclusions

The analysis carried out in this report has shown the extraordinary variety of forms of representation of casual workers in Europe, ranging from unofficial organisations of workers, sometimes very widespread and trans-national, to campaigns aimed at raising the visibility of precinct workers, to more integrated welfare services. Obviously, the diversity of methods of representation is connected to the different centrality of OC workers in the labour markets of the various countries and to the different labour contexts in which workers move.

Whatever the form of representation, it seems possible, however, to outline some common lines of development and appropriation of best practices. First of all, although OC work represents a largely invisible reality, there seems to be a wide-spread assumption by unions on the importance of beginning to confront this world. Even when unions are not directly involved, there is a recognition of the importance of devoting attention to personal engagements that may lay the basis for relations and services.

Secondly, it can be seen that language and communication play a key role in the same way in which they represent limits and barriers to addressing OC workers.

Most of the experiences presented have a great focus on communication and the use of different tools, from less traditional to more traditional. The development of tools for communication with OC workers holds also the potential to generate relations in situations where the workers' voice is not represented by any organisation.

Thirdly, there is a well-codified experience of street surveys in relation to OC workers. These surveys are generally linked to campaigns aimed at particular groups of workers.

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THE PROTECTION OF HUMAN DIGNITY AND PERSONALITY RIGHTS IN THE CONTEXT OF CONFLICT OF LAWS

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Abstract: *Human dignity, as a core value of both international and domestic law, demands effective legal protection of personality rights in cross-border situations. This paper examines how private international law addresses conflicts of laws regarding violations of privacy, honor, image, and personal identity in a digitalized and globalized world. It explores the applicable law criteria (lex loci delicti, law of the domicile, party autonomy) and the limits of conflictual autonomy when fundamental rights are at stake. The paper suggests a balanced approach that reconciles state sovereignty with international imperatives regarding personality rights, especially in cases involving extraterritorial elements (e.g., online defamation, unauthorized image publication, commercial misuse of names).*

Key words: *human dignity, personality rights, applicable law, conflict of laws, cross-border protection*

1. Introduction

Human dignity constitutes the moral and legal foundation of all human rights and a unifying principle of contemporary legal orders. Both international and domestic systems recognise that the intrinsic worth of every person demands respect and legal protection.

In an era of global communication, digitalization, and transnational interactions, violations of personality rights—such as privacy, honour, image, and personal identity—frequently transcend borders, producing complex questions regarding applicable law, jurisdiction, and enforcement.

Private international law (PIL), traditionally designed as a neutral system for resolving conflicts of laws, must now respond to a normative imperative: to ensure that the dignity inherent in every human being remains protected irrespective of territorial boundaries. This article explores how PIL mechanisms can safeguard human dignity in cross-border contexts. It also examines the Romanian Civil Code as an illustrative example of integrating dignity and inherent human rights within a conflict-of-laws framework.

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Personality rights derive directly from this notion, encompassing a broad spectrum of non-patrimonial interests—privacy, image, honour, identity, and reputation. They are considered *inherent rights of the human being*, non-transferable and inalienable. This intrinsic link between dignity and personality finds a clear expression in the Romanian Civil Code, Article 58, which provides that *"Non-patrimonial rights are inherent to the human being and are inalienable."* The provision acknowledges that such rights exist *ex lege* by virtue of human existence, not by virtue of state recognition or consent.

Consequently, the protection of personality rights is not merely a question of tort liability but a reflection of the ontological value of human dignity. As Peters (2021) observes, dignity functions both as a source and a limit of legal regulation, ensuring that personal autonomy is always exercised within the bounds of respect for others' humanity.

2. The European Human Rights Framework

At the supranational level, the *European Convention on Human Rights (ECHR)* establishes the primary framework for protecting human dignity through personality rights. *Article 8* guarantees the right to respect for private and family life, home, and correspondence, while *Article 10* protects freedom of expression.

The *European Court of Human Rights*(ECtHR) has consistently held that these provisions must be balanced through a *proportionality test*, ensuring that freedom of expression does not unjustifiably encroach upon personal dignity (*Von Hannover v. Germany (No. 2)*, 2012; *Axel Springer AG v. Germany*, 2012).

This balancing reflects the dual nature of dignity—as both a shield and a framework for freedom. The ECtHR's jurisprudence has influenced national systems, including Romania, by integrating human dignity into the core of private law. Moreover, it indirectly shapes private international law by guiding how domestic courts interpret public policy (*ordre public international*) when foreign laws or judgments contradict the essential values of human rights.

The principal EU regulation governing obligations arising from lawful and unlawful juridical acts (juridical acts in the narrow sense) is Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007, commonly known as "Rome II", which has been applicable since 11 January 2009.

At present, this European legislative instrument constitutes the general framework governing conflict-of-law rules applicable to non-contractual/extracontractual obligations. This EU legislative act sets out, particularly in its Preamble, the fields to which it applies (including the fields excluded from its scope), as well as the rationale (recitals) and the objectives for which it was enacted and adopted—rationale and objectives that are, to a considerable extent, identical or similar to those of the Rome I Regulation.

In drafting the conflict-of-law rules contained in the Rome II Regulation, the European legislator started from the major premise that the notion of non-contractual obligation is understood and regulated differently from one State to another. Accordingly, the Regulation seeks to define this concept as an autonomous one, detached from the domestic regulations of each Member State—an approach expressed in Recital 11 of the Preamble. The drafters of the Regulation took into account both the various juridical

acts and events that may constitute the source of non-contractual obligations governed by this legislative act and the persons who incur tortious liability, including in situations where strict (objective) liability is engaged.

By establishing uniform rules concerning the law applicable to non-contractual obligations, the issuer of the Regulation sought to avoid the risk of "distortions of competition between litigants within the Community" (Recital 13 of the Preamble), to achieve the aim of ensuring legal certainty, and to meet the need to do justice in individual cases. Likewise, the Regulation pursues the enhancement of the predictability of judicial decisions and the establishment of a reasonable balance between the interests of the parties to tortious legal relationships (between the author—the liable person—and the victim—the injured party).

3. Conflict of Laws and Personality Rights

The *Article 1(2)(g)* of the Rome II Regulation explicitly excludes obligations "arising out of violations of privacy and rights relating to personality, including defamation." This exclusion has created a *regulatory vacuum*, leaving national courts to apply their domestic conflict rules (Mills, 2018; Kessedjian, 2017).

In response, the European Parliament proposed adding a new *Article 5a* to *Rome II*, suggesting that such cases be governed by "the law of the country in which the most significant element or elements of the loss or damage occur" (European Parliament, 2012). Nevertheless, the amendment has not been adopted, perpetuating legal fragmentation.

The determination of applicable law in cases of cross-border personality rights violations remains unsettled in European private international law.

The second paragraph of Article 2641 lays down a fundamental rule for resolving conflicts of laws that may arise from legal relationships based on lawful and/or unlawful juridical acts which lack connecting factors (relevant points of attachment): "in matters that do not fall within the scope of European Union regulations, the law governing the pre-existing legal relationship between the parties shall apply, unless otherwise provided by international conventions or by special provisions."

Accordingly, in the view of the Romanian legislator in 2009, only the exceptional situations falling outside the scope of the Rome II Regulation are to be resolved in accordance with the rule set forth in paragraph 2.

Legal doctrine, concerned with identifying the categories of non-contractual obligations that are to be governed by the rule laid down in paragraph 2 of Article 2,641 of the Civil Code (namely those not subject to EU regulations), has taken the view that the following categories fall within the scope of this paragraph:

- Non-contractual obligations that are accessory to a pre-existing legal relationship between the parties, namely those listed in Article 1(2) of the Rome II Regulation as excluded from its application (such as obligations arising from family relationships; obligations arising from matrimonial property regimes; obligations arising from bills of exchange and other negotiable instruments; obligations arising from nuclear damage; obligations arising from infringements of the right to privacy; etc.).

- Non-contractual obligations falling within the scope of international conventions to which our country is a party;
- Non-contractual obligations governed by special statutory provisions that derogate from the general law.

Given that Article 1(2)(g) of the Rome II Regulation expressly excludes from its scope non-contractual obligations arising out of infringements of private life and personality rights (such as the right to freedom of expression, the right to privacy, the right to dignity, the right to honor and reputation, the right to one's own image, the right to respect for a deceased person with regard to his or her body and memory, and the right to respect for the wishes of a deceased person concerning his or her funeral and body), including defamation, it should be noted that Article 2642 of the Civil Code fills this regulatory gap by establishing, through its three paragraphs, certain special conflict-of-law rules.

A first rule is that set out in paragraph 1, which concerns the law applicable to claims for damages arising from infringements of private life (for an overview of the scope of infringements of private life, see, for example, Article 74 of the Romanian Civil Code regarding the inviolability of the home or residence, the interception of private conversations, the surveillance of a person's private life, the capturing of the image or voice of a person located in a private environment without his or her consent, provided that the person lawfully occupies that space, etc.) or of personality rights, where such infringements are committed through the use of the mass media or any other public means of communication.

In such situations, the injured person may choose between three categories of laws:

- the law of the State of the victim's habitual residence;
- the law of the State where the harmful result occurred;
- the law of the State in which the author of the wrongful act has his or her habitual residence, or, in the case of legal persons, their registered office.

In order for the victim to be able to opt for either the law of the State of habitual residence or the law of the State where the harmful result occurred (*lex loci læsionis*), paragraph 2 of Article 2642 imposes a subjective and special requirement: the victim of the unlawful interference must reasonably have expected (anticipated) that the effects of that interference would occur in one of the two States chosen. This is an objective criterion, assessed by reference to what any reasonable person in such circumstances would have foreseen.

It has been argued in legal doctrine that the purpose for which the legislator introduced this special requirement is to facilitate the application of the "third conflict-of-law rule, which leads to the law of the State of the author of the damage (Article 2642(1)(c))." The same author further contends that "this solution is justified by the need to avoid imposing excessive liability on the author (which the other applicable laws might establish), as well as by the fact that, in many cases, the law of the author coincides with the law of the seized court, being the law of the defendant in the action brought by the victim (Article 1065(1) of the Romanian Code of Civil Procedure)."

A final rule established by Article 2642 of the Civil Code concerns the so-called right of reply (*droit de réponse*), which must be granted to a person who has been the victim of

an infringement of personality rights committed through the mass media or through a publication. In this regard, paragraph 3 provides that: "The right of reply against infringements of personality rights is governed by the law of the State in which the publication appeared or from which the broadcast was transmitted."

As follows from the literal and logical interpretation of the cited provisions, the right of reply, as a remedial mechanism for damage caused by such infringements, can be subject only to one category of law: the law of the State where the act infringing the personality rights was committed (*lex loci delicti commissi*).

This conflict-of-law solution naturally prevails, since the law entitled to determine the conditions under which the injurious publication or broadcast may be produced and disseminated is the law of the State where the publication appeared or from which the broadcast originated.

4. The Inapplicability of Party-Chosen Law to Personality Rights in Private International Law

One of the hallmarks of modern private international law is the principle of party autonomy—the freedom of individuals to choose the applicable law to their relationships. However, this autonomy finds natural limits in matters involving human dignity and personality. As *Rome II* clarifies, such rights fall outside the domain of contractual freedom (Recital 32).

From a philosophical and normative perspective, the inherent rights of the human being cannot be disposed of by will, contract, or agreement. Article 58 of the Romanian Civil Code, by declaring such rights inalienable, effectively imposes a *substantive limit* on private autonomy.

In international contexts, this limit operates as a manifestation of *international public policy*—a mandatory standard overriding foreign norms that would otherwise apply under conflict rules (Basedow, 2015).

This principle aligns with broader European jurisprudence. For instance, the ECtHR has repeatedly emphasised that states must ensure effective remedies against violations of dignity, even when such violations arise from private actors (*Delfi AS v. Estonia*, 2015).

Thus, private international law must reconcile the freedom of choice with the non-derogable status of inherent human rights.

5. Corrective Solutions for Safeguarding Fundamental Rights

The international public policy of private international law plays a crucial corrective role in ensuring that foreign law does not produce results incompatible with the forum's conception of human dignity. According to Article 8 ECHR and the doctrine developed in *Axel Springer AG* and *Von Hannover*, freedom of expression must yield where personal integrity and privacy are seriously infringed.

When applied in conflict-of-laws situations, this doctrine means that a court may refuse to apply a foreign law—or to recognize a foreign judgment—that tolerates unjustifiable violations of dignity.

This function of *ordre public* has been widely recognized in European scholarship (Lagarde, 2019; Kono, 2020).

In the Romanian system, the combination of Articles 58 and 2577 of the Civil Code ensures that even if a foreign law governs the facts, its application is limited by the inalienable nature of personality rights.

Hence, dignity operates as both a *substantive standard* and a *conflict-override principle*—ensuring that the essence of human rights prevails over the formal operation of connecting factors.

6. Conclusions

In the digital era, personality rights face a paradox: the borderless nature of the internet amplifies both exposure and jurisdictional complexity. A defamatory statement or an image posted online may cause harm in multiple states simultaneously. The traditional *mosaic approach*, which allows each jurisdiction to assess damages for harm suffered within its territory, has proven inadequate (Kono, 2020).

Instead, the "center of interests" doctrine, as recognized by the CJEU, offers a human-centered alternative, anchoring jurisdiction and applicable law to the individual's social and professional nexus. This approach resonates with data protection law, particularly the *General Data Protection Regulation* (GDPR), which extends extraterritorial protection to personal data as an expression of human dignity (Peters, 2021). Romanian law's reliance on *lex personalis* (Art. 2577 Civil Code) harmonizes with this perspective, as both privilege the personal connection over geographic happenstance.

The convergence between GDPR principles and PIL demonstrates the growing unity of public and private international law around the value of human dignity.

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INCLUSIVE JUSTICE AS AN EXPRESSION OF THE LEGAL EQUALITY GUARANTEED TO PERSONS WITH INTELLECTUAL AND PSYCHOSOCIAL DISABILITIES

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Abstract: *People with intellectual and psychosocial disabilities have long faced problems of social exclusion and stigmatization. The principle of legal equality, which is essential for the exercise of other fundamental human rights, has led to the development of accessible public policies tailored to the specific needs of each individual in these vulnerable groups. This has led to a paradigm shift, with a change in attitude, restoring dignity to these individuals and eliminating discrimination against them. In this context, the study aims to identify the obligations of Member States to the UN Convention on the Rights of Persons with Disabilities, to ensure these persons' access to justice.*

Key words: *intellectual disability, discrimination, access to justice, human rights*

1. General Considerations regarding the Protection of the Rights of Persons with Disabilities

Equality and non-discrimination, interconnected with human dignity, are among the fundamental principles and rights of international law, representing the cornerstone of human rights treaties and conventions, as outlined in General Comment No. 6 (2018) of the Committee on the Rights of Persons with Disabilities. Thus, an international reference document promoting inclusive equality is the Convention on the Rights of Persons with Disabilities, adopted in New York on December 13th, 2006, and opened for signature on March 30th, 2007, ratified by Romania through Law No. 221/2010. In doctrine (Avram, 2022, p. 109), it is considered that this Convention marks a significant evolution from the formal model of equality to a substantial one in terms of measures to protect persons, making a transition from substitute decision-making to supported decision-making. This represents a paradigm shift from the medical model of disability to the social model, which implies a fundamental change in attitude, restoring the

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dignity of these persons (Donaldson, 2012, pp. 1-4) and eliminating discrimination based on disability.

Some terminological clarifications would be useful in the context of this study. In this regard, we note that, according to Article 1 of the New York Convention (cited above), "persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others", and "discrimination on the basis of disability means any distinction, exclusion, or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise, on an equal basis with others, of all fundamental human rights and freedoms in the political, economic, social, cultural, civil, or any other field. The term includes all forms of discrimination, including the refusal to provide reasonable accommodation". Although, unfortunately, the Convention does not provide us with official interpretations of what is meant by a person with intellectual or psychosocial disabilities, we note, with reference to Romanian national legislation – Law No. 448/2006 on the protection and promotion of the rights of persons with disabilities, and Law No. 487/2002 on mental health and the protection of persons with mental disorders, that this refers to persons with psychological or mental impairments that totally prevent or limit their equal access to society, requiring protective measures to support their social integration and inclusion.

In implementing these public policies to eliminate discrimination on the grounds of disability, concrete measures have been adopted at both European Union and national levels, to rethink the regulatory situation of these categories of persons. Thus, the European Union ratified the Convention on the Rights of Persons with Disabilities (abbreviated as CRPD) by Council Decision 2010/48/EC of November 26, 2009, and the European Commission has committed itself to promoting a Union of equality, to which the Strategy on the Rights of Persons with Disabilities 2021-2030 makes an important contribution. At the domestic level, the Romanian reform in this area was achieved through the adoption of Law No. 140/2022 on certain measures to protect persons with intellectual and psychosocial disabilities. The main purpose of this legislative act was to diversify and ensure the proportionality of measures to protect individuals, including in terms of time, resulting in a more complex legal regime (Nicolae et al., 2025, p. 230). The new regulation comes, admittedly, as a delayed response, in the context in which, by Decision No. 601/July 16, 2020, of the Constitutional Court of Romania, the provisions of Article 164 of the Romanian Civil Code, concerning judicial interdiction, were declared unconstitutional, essentially because this norm did not provide for gradual measures of protection for individuals affected by mental disorders – Diaconescu and Vasilescu (2022, p.124).

As it has been highlighted in the literature (Ruškus, 2023, p.2), in the sphere of protecting the rights of persons with intellectual and psychosocial disabilities, access to justice stands out as one of the most problematic aspects, both in terms of the diversity of barriers encountered and its implications for the effective exercise of legal capacity. We also believe that the challenges lie in harmonizing procedural guarantees and support measures, in line with the principle of respecting the autonomy of these vulnerable groups. Article 13 of the CRPD specifically addresses the obligations of

signatory states with regard to access to justice for persons with disabilities, requiring authorities to ensure "effective access to justice for persons with disabilities, on an equal basis with others, including by providing procedural and age-appropriate adjustments to facilitate their active role as direct and indirect participants, including as witnesses, in all legal proceedings, including the investigation and other preliminary stages." Especially when it comes to persons with such cognitive disabilities, access to justice is indivisible and interdependent with other rights and freedoms enshrined in the CRPD (Ruškus, 2023, p.5). Thus, this right must be interpreted in relation to equality and non-discrimination as provided for in Article 5 of the Convention, Article 12, which develops aspects related to equal recognition before the law, and Article 14 on liberty and security of the person. It is even considered (Ruškus, 2023, p.2) that Article 13 of the Convention on the Rights of Persons with Disabilities establishes a concept of access to justice that is significantly broader than that commonly associated with the guarantees of a fair trial. In line with this interpretation, the idea of transformative justice has been promoted as a principle of law, with the aim of clarifying positive actions and support measures, in order to ensure real access to justice for these categories of persons.

Undoubtedly, the case law of the European Court of Human Rights has also contributed to this new paradigm, which has made national authorities responsible for paying greater attention to cases involving such persons. Therefore, in the following, we propose to examine the specific case law of the European Court of Justice.

2. Integrating the Principles of Inclusive Justice, according to the Case Law of the European Court of Human Rights

According to the European Law Manual on Access to Justice, under Council of Europe and EU law, prohibitions on discrimination must be understood to mean that states must take positive measures to ensure that persons with disabilities have access to their rights in practice. The measures that Member States must take differ, depending on the circumstances. Therefore, we will refer below to several examples of interpretations provided by the European Court of Human Rights.

In the case of *Shtukaturov v. Russia*, the applicant, an adult diagnosed with mental disorders and classified as having a mental disability, was the subject of an application filed by his mother before a court, requesting his deprivation of legal capacity and the establishment of guardianship. The applicant before the E.C.H.R. was not officially informed of the national proceedings and was not present at the court hearing, following which he was declared incapable and his mother was appointed as his guardian with general powers of representation. The applicant subsequently attempted to lodge an appeal through a lawyer, who considered him capable of understanding complex legal issues; however, the appeal was dismissed as inadmissible on the grounds that, being legally incompetent, he could only act through his guardian. The guardian then decided to have the applicant admitted to a psychiatric hospital, where he was consistently denied the right to contact his lawyer. In examining this case, the Court emphasized that the procedure for determining legal capacity was of fundamental importance to the applicant, as it directly affected his personal autonomy and could lead to restrictions on his liberty. Thus, his presence was necessary both for the exercise of

his right of defence and for the direct assessment of his mental capacity by the judge. In such circumstances, assessing the case solely on the basis of documents, without hearing and without the presence of the applicant - who was relatively autonomous - was unjustified and contrary to the principle of adversarial proceedings. In addition, the claimant's inability to challenge the decision, as his appeal was dismissed without review, violated his right to an effective remedy.

In another case – *Stanev v. Bulgaria* – the applicant, at the request of two relatives, was partially deprived of his legal capacity on the grounds of a diagnosis of schizophrenia. Subsequently, against his will, he was placed under guardianship and admitted to a social centre for people with mental disorders. On several occasions, the applicant, assisted by a lawyer, requested that the guardianship be lifted, but his requests were rejected. The guardian, in turn, refused to take the necessary action, arguing that the applicant did not have the means to live independently and that it was appropriate for him to remain in the centre. At the lawyer's initiative, the claimant was assessed by an independent psychiatric expert, who considered that the diagnosis of schizophrenia was questionable, as the symptoms observed could also be associated with alcohol abuse. The expert concluded that the claimant was capable of reintegrating into society and that prolonged confinement in the centre was detrimental to him. The European Court, analysing the national legislative framework, found that it allowed the applicant to request the restoration of his legal capacity exclusively through the guardian, without distinguishing between situations of total and partial incapacity. At the same time, the domestic rules did not provide for any periodic review of the grounds for the measure, which, in the applicant's case, was indefinite in time. In this context, the Court indicated that, although the right of access to court may be subject to legitimate restrictions, these cannot affect the essence of the right of the person concerned to obtain judicial review of the decision limiting their legal capacity. Direct access to court to request a review of the measure is a fundamental guarantee for the person declared incapable, being compatible with the State's freedom to establish appropriate procedures. However, limitations such as preventing excessive requests can be achieved by means less restrictive than automatically excluding direct access for example, by limiting frequency or by preliminary admissibility checks. The Court emphasized in this case that the European trend, as well as international instruments relating to the protection of persons with mental disabilities, converge towards recognizing a greater degree of legal autonomy and the right of direct access to the courts to regain capacity.

In *Blokhin v. Russia*, the European Court emphasized the need for enhanced procedural safeguards in cases involving minors, particularly when they suffer from disabilities, given the best interests of the child and their heightened vulnerability. The case concerned the deprivation of liberty for a period of 30 days of a 12-year-old minor diagnosed with a mental and neurobehavioral disorder in a temporary detention centre for juvenile offenders. The applicant alleged a violation of the right to a fair trial, stating that he had been subjected to police questioning without the presence of a guardian or lawyer and that he had not been given the opportunity to question the two accused witnesses, whose statements had formed the basis for the detention measure. The Grand Chamber found a violation of Article 6 of the Convention, noting that the right to

defence had been seriously affected by the absence of legal assistance at the time of the interrogation and by the use of statements made by witnesses who had not been questioned by the defence as the basis for the deprivation of liberty.

The applicant did not benefit from effective participation in the proceedings concerning the declaration of his incapacity, being completely excluded from the court hearings in the case of *A.N. v. Lithuania*. Although medical documents were included in the case file, the Court ruled that the applicant should have been allowed to participate directly in the proceedings in order to give him the opportunity to present his case directly and to enable the court to make its own assessment of his mental capacity. This aspect was emphasized once again to highlight the extraordinary significance of the proceedings for the applicant, since what was being judged was his own autonomy in all aspects of life (Rizoiu, 2024).

An unjustified restriction of access to justice was also found by the European Court of Human Rights in the case of *Nikolyan v. Armenia*. In this case, the applicant initiated divorce and eviction proceedings, and his wife and son requested that he would be declared incapacitated. Following a psychiatric report indicating a delusional disorder, the courts declared him incapable, and his son, who was appointed guardian, withdrew the divorce and eviction requests. The courts ordered the termination of these proceedings, without conducting an effective assessment of the applicant's procedural interest. Thus, the applicant was deprived of any real possibility of continuing the proceedings, depending on a guardian who was in an obvious conflict of interest. The court did not order a hearing, did not assess the impartiality of the guardian, and did not adequately justify its decision to take note of the withdrawal of the applications by the guardian. It was also questionable that domestic law imposed an absolute ban on direct access to court for persons declared incapable and did not provide for periodic review of the measure, contrary to international standards. In the absence of a guardianship without conflicts of interest, the applicant had no effective means of challenging his incapacity, the conclusion being that the limitation of his capacity was disproportionate.

3. Final, Concluding Remarks

People with disabilities (including intellectual and psychosocial disabilities) differ in terms of their abilities, but they should not be treated differently in terms of their rights - this is the current standard required at the European level - Nicolae and Spîrchez (2025, p. 493). The principle of substantive equality is based on the recognition of differences between people, in which sense transformative justice must be promoted, implementing inclusive principles developed by the case law of the European Court of Human Rights, which are in the direction of procedural adaptation, as a mandatory requirement for a fair trial for these categories of persons.

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