

HUMAN DIGNITY IN ROMANIAN LAW

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ABSTRACT

Dignity is a concept that has evolved according to the moral and ethical requirements of a certain time and space, following the shifts of life of the community which sanctions it. It has come to signify the birth-given right of the individual to be valued by others and to be treated accordingly. Regarding the legal aspect of dignity, it is undisputed that it is one of the fundamental rights of the human being. It is no longer a question of whether one realizes or wastes dignity, because the law is made to protect this value no matter what the actual situation of one is in society. As according to the Romanian Constitution the international conventions ratified by Romania take precedence over national legislation, the same being valid for European Treaties and other mandatory community regulations, these international legal norms are included in the national legislation. Their legal force is equal to the force of the Constitution. The paper analyses the legal frame for protection of dignity in Romania through the international conventions protecting human rights that Romania has adhered to, its Constitution, the Civil code (Law No. 287/2009) and the Criminal code (Law No. 286/2009). Case law of the European Court of Human Rights, which enlarges the normative field by including in the interpretation of the European Convention of Human Rights other international acts, and of the European Court of Justice is presented. Although a very wide concept, human dignity is perceived in connection with other human rights in a common manner in the international community. Romanian legislation is in line with international norms, but not always correctly applied.

Keywords: *Public law, human rights, dignity, conventions on human rights, personal rights.*

1. Introduction

Social norms are a way of directing the activity of humans towards objectives with the nature of collective values. In order to attain their goal, the norms encourage desired behaviours with different stimulants and discourage undesirable behaviour by different sanctions. The most appreciated values in a society are protected by legal norms, since such norms are the only one containing a sanction applied by the constraining force of the state. Values are ranked in the legal system, the most important values being protected by the most severe sanctions. Personal values, such as life, health, body integrity are protected by criminal law. Such values have an objective value and any serious injury of those values is punished by the state

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regardless the claim of the victim. Among the most praised values protected by legal norms is human dignity.

As dignity is considered a human value around the world, some researchers considered that its intrinsic meaning has been left to intuitive understanding, conditioned in large measure by cultural factors [1]. Although the meaning of dignity may present some particularities in different cultures as it points to different deeper foundations, the main characteristics are similar, so we agree with the opinion that dignity is one of the universal human rights associated to the social structure and functionality and not to culture [2].

It is extremely difficult to forge a definition of human dignity, although everyone understands the basic meaning of the term. Kant attaches to this social value the need of consciousness, as he considers that by dignity a person commands respect for himself from all from rational beings, with whom he can measure himself and value himself on equal footing [3]. Kant attaches dignity to moral, a human being his/her own legislator, determining some modern thinkers to consider that dignity exists when a person is capable to exercise his/hers moral capacity [4]. It is broadly considered that dignity is hurt by humiliation. This also leads to the question of the necessity of consciousness: can a person that is not conscious of what is happening to him/her be humiliated and thus hurt in his/her dignity? For an answer we have to establish if human dignity is a subjective or an objective value. This discussion was often brought up in connection with medical interventions upon human embryos [4], [5]. In our opinion this is a false perspective, as the main discussion in this case is weather a human embryo is a human person with rights attached, or, at what stage of a human embryo's development it may be considered as such. In order to find an answer, we consider that a correct approach is to find out if in the related concepts dignity - humiliation consent is relevant [5]. In this respect, German administrative courts decided that peep shows (in which striptease and other obscene acts were performed by women, while spectators watched behind widows) could be prohibited as they were incompatible with human dignity, even if women were performing voluntarily [5]. It has also been pointed out that there are two aspects of dignity that should be considered: a subjective one, referring to each individual's sense of honour, and an objective one, regarding reputation, the esteem granted by the community [6]. Many legislations protect the dignity of human remains. This also leads to the idea that dignity has an objective value, as these bodies, even if they died hundreds or thousands of years ago, do not lose their human dignity in the eyes of later generations [7]. We can conclude that human dignity is related to personal status, the way a person perceives herself in relation with others, or, the way he/she is perceived by others. The way a person perceives herself in relation with others is closer related to freedom and equality, and the way a person is perceived by others is closer related to morals and culture. Dignity is related to a great number of situations of life. Infringements of human dignity may be produced by physical or psychological injuries. A combination of those two are

related to the wellbeing of humans. In the case of psychological injuries, words or images may be used. The way a person is perceived by others is related to the concept of reputation, as a sum of values attached to the person that are valued by the society.

International conventions regarding human rights are part of the Romanian legislation, being included in the so-called "constitutionality block". According to art. 20 para. 2 of the Romanian Constitution where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions. As Romania is member of the European Union since 2007, the Constitution of Romania places the European treaties and European legislation in the same "constitutionality block". According to art. 148 para. 2 of the Constitution "As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act".

Together with the international conventions, the case law of the international courts that survey the compliance with certain conventions also takes precedence in the same conditions.

The article is highlighting some of the main international legal documents Romania has adhered to that refer to the protection of human dignity and the way the jurisprudence of the European Court of Human Rights (ECtHR or Court) and the Court of Justice of the European Union (CJEU) are considering such international documents. The article also comments on the way human dignity is protected by the Romanian Constitution, the Romanian Civil and Criminal codes.

2. Protection of human dignity by international conventions Romania is a party to

The main international situations where people were hurting each other were the wars. The first Geneva Convention (Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 1949) protects the human dignity of combatants in international armed hostilities against „unnecessary suffering" [8] obliging that the wounded or sick combatants, to whatever nation they may belong, shall be collected and cared for (art. 6). The Geneva Convention relative to the Treatment of prisoners of War (revised in 1949), prohibits outrages upon personal dignity, in particular, humiliating and degrading treatment, in the case of persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause (art. 3). The same text prohibits cruel treatment and torture. As, unfortunately, armed conflicts are a constant of modern and

contemporary world, remedies against the infringements these conflicts are bringing to human dignity of the victims include international criminal courts. It was affirmed that international courts are complementary to national courts and have to fill the gaps when states are unwilling to act because of breakdown of domestic judicial infrastructure or political reasons related to the fact that suspected perpetrators are high-ranking persons close to the country's leadership [9].

Protecting human dignity was a constant concern for the United Nations Organisation (UNO). In the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948, several norms aim to protect human dignity against physical abuse. It has to be underlined that dignity is distinctly mentioned in the first sentence of the preamble of the Declaration, alongside with „equal and inalienable rights” as constituting the „foundation of freedom, justice and peace in the world”. Art. 1 of the Declaration links dignity to equality, stating that „All human beings are born free and equal in dignity and rights”. The text emphasizes that dignity comprises the same values for all human beings and inequality of rights can lead to harming of human dignity. The Declaration is further protecting life, liberty and security of person (art. 3), is banning slavery and servitude (Art. 4), torture, cruel, inhuman or degrading treatment or punishment (art. 5).

The United Nations Organisation also focused on special groups that may be vulnerable. The starting point in the protection of such groups is the Declaration of Human Rights. Children are under the guidance of parents, educational institutions or different state institutions. Children are vulnerable as they have to obey their guides and against disobedience disciplinary measures may be taken. The Convention on the Rights of the Child (1989) stipulates that school discipline has to be administered in a manner consistent with the child's human dignity (art. 28). Also, every child (the Convention is defining as being a child a person with the age under 18 years old) deprived of liberty shall be treated with respect for the inherent dignity of the human person, taking into account the needs of persons of his/her age (art. 37). Also, the Convention requires that every child alleged as, accused of, or recognized as having infringed the penal law should be treated in a manner consistent with the promotion of the child's sense of dignity and worth (art. 40). The Convention on the Elimination of All Forms of Discrimination against Women states in its introduction that discrimination against women violates the respect for human dignity. The Convention on the Rights of persons with Disabilities (2006) calls for the protection of the dignity of such persons who find themselves in disadvantaged situations in comparison with others. The Preamble of the Convention mentions that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person. According to the Convention, respect for the dignity of persons with disabilities includes individual autonomy, freedom to make one's own choices and independence of persons (art. 3). The Convention against Torture and other Cruel,

Inhuman or Degrading Treatment or Punishment adopted by the UNO General Assembly in 1984 also mentions in its preamble that the equal and inalienable rights of all members of the human family, that are the foundation of freedom, justice and peace in the world derive from the inherent dignity of the human person. The definition of torture mentions acts that inflict intentionally severe suffering on a person, of both physical and mental nature.

The advances in biomedicine lead to the Council of Europe's Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (known as the Oveido Convention, 1999). It provides framework structure for the preservation of dignity in relation with the field of bioethics [10].

3. European protection of human dignity

3.1. European Convention of Human Rights and the case law of the European Court of Human Rights concerning human dignity

At the European level, the European Convention of Human Rights (ECHR or Convention) does not mention explicitly dignity as a protected right, with the exception of Protocol no. 13, for the protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances, which mentions that the abolition of the death penalty is essential for the protection of everyone's right to life and for the full recognition of the inherent dignity of human beings. Nevertheless, the ECtHR condemned the states for infringing or not being able to protect the rights explicitly protected by the Convention, due to infringements of human dignity. The judgements of the Court consider the international conventions. Human dignity can be associated with all rights protected by the Convention. Our article mentions only a few examples.

Related to Art. 3 of the Convention, that prohibits torture, inhuman or degrading treatments, in the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, the Court judged upon the treatment applied by the state to a person that was abandoned at birth and thus placed in an orphanage and later diagnosed with "profound intellectual disability, an IQ of 30 and HIV". The Court found that in the case were incident the provisions of the United Nations Convention on the Rights of Persons with Disabilities. A major problem risen by this case was the possibility of persons with mental disabilities to protect themselves before justice against different forms of violations of their dignity. In this respect, the UNO Universal Declaration of Human Rights says that everyone has the right to recognition everywhere as a person before the law (Art. 6). As a third party, The European Commissioner for Human Rights considered that nongovernmental organisations (NGOs) „played an important role, including by facilitating vulnerable people's access to justice". The Commissioner also referred to case-law of other

international courts, such as the Inter American Court of Human Rights, which granted *locus standi* to NGOs acting on behalf of alleged victims, even when the victims had not appointed these organisations as their representatives, as in the case of *Yatama v. Nicaragua*. The Court considered the view of the Bulgarian Helsinki Committee saying that “crime against institutionalised individuals with mental disabilities was shielded from the enforcement of laws designed to ensure its prevention, punishment and redress”. After an extensive analysis of previous jurisprudence, the Court found that the complaint was admissible, despite the fact that the NGO that lodged it had no power of attorney from the victim and the victim died before the lodging of the complaint, considering that any other solution will allow the respondent State to escape accountability. The Court found that the treatments that Mr. Câmpeanu was subjected to, namely negligent medical care, failure to provide adequate care, living conditions such as lack of food, lack of heating and presence of infectious diseases, met the conditions to consider that art. 3 of the ECHR has been violated. Considering the definition from the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, it is obvious that the dignity of the victim has been severely hurt, although it is improbable that the victim has personally perceived an infringement of his dignity. At the same time, the judgement underlines that one has the right to the protection of dignity even if one has ceased to live.

In the case of *Siliadin v. France*, the European Court of Human Rights found that obtaining of performance of services for no payment or for manifestly disproportionate underpayment, and the subjection of another to living or working conditions incompatible with human dignity was a violation of art. 4 of the European Convention of Human Rights – prohibiting forced labour. The conclusion were also applied in the case of *C.N. v. the United Kingdom*.

Restraining one’s freedom is clearly an imposition to one of the most important human rights. This is why, according to art. 5 of the ECHR, the measure can only be taken if it is provided by the law. The person has to be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him, and shall be brought promptly before a judge or the officer authorised by the law to exercise judicial power for trial within a reasonable time. In the case of *Khlaifia and Others v. Italy*, the UNO’s International Law Comision’s „Draft articles on the expulsion of aliens” were referred by the ECtHR. According to art. 13 of this international document, all aliens subject to expulsion shall be treated with humanity and with respect for the inherent dignity of the human person at all stages of the expulsion process. During the proceedings of the case it was argued that under art. 1 of the European Union’s Charter of Fundamental Rights, which protects human dignity, any measures entailing the deprivation of liberty of migrants and the conditions of such detention had to ensure respect for their human dignity.

Art. 6 of the Convention protects the right to a fair trial. It has been emphasized that all procedure rules established as rules of a fair trial, such as equality between the parties, adversity and ruling by an independent and impartial judge concur to a dual purpose: facilitating both a fair outcome and a fair process which respects the parties' dignity [11]. In the case of *D.M.D. v. Romania*, the Court found a violation of art. 6 of the Convention due to the incapacity of national administrative authorities and courts to protect a child against domestic violence as the investigations and procedures that led in the end to the conviction of his father lasted for over eight years, as well as for the lack of compensation for the sufferings enduring due to the excessive length of procedures. The judgement referred to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) that requires States Parties to prevent violence against women, protect victims and prosecute the perpetrators. It also mentions the Guidelines on child-friendly justice adopted on 17 November 2010 at the 1098th meeting of the Ministers' Deputies, the Committee of Ministers (CM/Del/Dec(2010)1098/10.2) that requires that the best interest of children must be a primary consideration in all matters involving or affecting them and that justice must be adapted to and focused on the needs and rights of the child, including his or her right to respect for his or her physical integrity and dignity and recognise the children's right to legal counselling and to expeditious proceedings.

The criminal law principle of *nullum crimen, nulla poena sine praevia lege*, expressed by art. 7 of the Convention ensures that only the law can define crime and prescribe penalty. However, people should be aware that social relationships are governed by legal principles that sometimes are placed above the national legislation. In connection with art. 7 it has been pointed out that the ECtHR may not have the competence to apply international rules, other than the international rules on human rights enshrined in the Convention [12]. Nevertheless, the Court has made such application. In our opinion this is justified by the fact that the rights protected are generally recognised human rights and their content cannot be defined without reference to international regulations. In the case *S.W. v. the United Kingdom*, the Court found no violation of art. 7 when a man was convicted for raping his wife at knifepoint, although a common law principle dating since 1736 was in force saying that the husband cannot be guilty of rape committed by himself upon his lawful wife. In finding so, the Court affirmed that "the abandonment of the unacceptable idea of a husband being immune against prosecution for rape of his wife was in conformity not only with a civilised concept of marriage but also, and above all, with the fundamental objectives of the Convention, the very essence of which is respect for human dignity and human freedom". This means that in the context of actual international legislation protecting human rights, such national rules as marital immunity against conviction for rape are obsolete. In the *Kononov v. Latvia* case, the Court had to decide if the applicant's conduct that was qualified as war

crime was statute-barred. Considering the „Geneva law” (1864-1949) on the treatment of persons and possessions under the control of the enemy, as well as the laws and customs of war prior to the Second World War and jurisprudence related to prosecution of war events of the second World War, the Court ruled that as in 1944 no limitation period was fixed by international law as regards the prosecution of war crimes and neither have developments in international law since 1944 imposed any limitation period on the war crimes charges against the applicant, any prescription provisions in domestic law were not applicable and the charges against the applicant were never prescribed under international law.

Human dignity is often discussed in relation with family life and the respect for private life protected by art. 8 of the Convention. Judgements of the Court emphasized that in respect of children, who are particularly vulnerable, the measures applied by the State to protect them against acts of violence falling within the scope of art. 3 and art. 8 should be effective and include reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge and effective deterrence against such serious breaches of personal integrity (*Z and Others v. the United Kingdom, M.P. and Others v. Bulgaria*) and that such measures must be aimed at ensuring respect for human dignity and protecting the best interests of the child (*C.A.S. and C.S. v. Romania, Pretty v. the United Kingdom*). In the case of *S. and Marper v. the United Kingdom*, the Court had to decide if storage of personal data such as fingerprints, cellular samples and DNA profile of persons suspected of a crime but not convicted, violate the right to private life. The Court observed that the protection afforded by art. 8 of the Convention would be unacceptably weakened if the use of modern scientific techniques in the criminal-justice system were allowed at any cost and without carefully balancing the potential benefits of the extensive use of such techniques against important private-life interests. Of particular concern proved to be the risk of stigmatisation, stemming from the fact that persons who have not been convicted of any offence and were entitled to the presumption of innocence, were treated in the same way as convicted persons, affecting their dignity. This can lead to insufficient protection against the misuse or abuse of such data and therefore represents a violation of art. 8. The ECtHR also decided that by using IT means in order to monitor the employees, an intrusion into their right to privacy occurs, as they would feel under scrutiny and therefore, they change or censor their usual conduct, habits, preferences [13].

The ECtHR has been a unifying instrument in applying bioethics by interpreting art. 8 in the light of the Oveido Convention [14]. In the case of *Glass v. the United Kingdom* for example, the Court reviewed the national regulatory framework on parental consent under the Oveido Convention, although the United Kingdom has neither signed nor ratified this convention. The Court considered that, having regard to the circumstances of the case, the decision of the authorities to override the second

applicant's objection to the proposed treatment in the absence of authorisation by a court resulted in a breach of art. 8 of the Convention. The applicants in the case considered that court involvement was crucial in a case where physical integrity, human dignity and fundamental rights were involved.

3.2. Charter of Fundamental Rights of the European Union and the Case Law of the Court of Justice of the European Union

European Union has adopted its Charter of Fundamental Rights. The preamble of the Charter shows that „the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law”. The first article of the Charter is dedicated to the protection of human dignity, strongly affirming that “Human dignity is inviolable. It must be respected and protected”.

The CJUE has underlined the importance of the value in the case of *Omega GmbH v. Bundesstadt Bonn* [C-36/02]. The specific question referred to the CJUE was whether a common legal conception in all Member States was a precondition for one of those States being enabled to restrict the basic freedom, on the grounds that human dignity had to be protected. The CJUE pointed out that human dignity was one of the general principles of law recognised by the Community as in need of protection, and that the measure taken in this context fulfilled the conditions for justifying the service restriction. According to the CJUE, this finding was not incompatible with the fact that the activity in question, which involved using laser guns to simulate homicide, was not subject to any restrictions in the United Kingdom, as Omega had imported the Laserdrome concept as a service provider from a firm in the United Kingdom.

The CJUE also ruled against inhuman or degrading treatments, based on the first article of the Charter. In the joined cases *Aranyosy and Căldăraru* [C-404/15 and C-659/15 PPU], it considered that as regards the prohibition of inhuman or degrading treatment or punishment, laid down in art. 4 of the Charter, the prohibition is absolute in that it is closely linked to respect for human dignity, the subject of art. 1 of the Charter. The cases related to European arrest warrants, which fell under the incidence of the Framework Decision 2002/584/JHA regarding Police and judicial cooperation in criminal matters. The Court stated that compliance with art. 4 of the Charter, concerning the prohibition of inhuman or degrading treatment or punishment, is binding, as is stated in art. 51 para. 1 of the Charter, on the Member States and, consequently, on their courts, where they are implementing EU law, which is the case when the issuing judicial authority and the executing judicial authority are applying the provisions of national law adopted to transpose the Framework Decision.

The CJUE also ruled upon situations where respect for family life implied respect for human dignity. In the judgement *A, B and C v Staatssecretaris van Veiligheid en*

Justitie [joined Cases C 148/13, C 149/13 and C 150/13], the CJUE decided that in relation to the option for the national authorities of allowing the submission of the applicants to possible 'tests' in order to demonstrate their homosexuality or even the production by those applicants of evidence such as films of their intimate acts, besides the fact that such evidence does not necessarily have probative value, such evidence would of its nature infringe human dignity, the respect of which is guaranteed by art. 1 of the Charter.

In the case *S. Coleman v Attridge Law and Steve Law* [C-303/06], related to discrimination, the opinion of the Advocate General was that human dignity entails the recognition of the equal worth of every individual. „One's life is valuable by virtue of the mere fact that one is human, and no life is more or less valuable than another". He also mentioned that „The most obvious way in which such a person's dignity and autonomy may be affected is when one is directly targeted because one has a suspect characteristic. Treating someone less well on the basis of reasons such as religious belief, age, disability and sexual orientation undermines this special and unique value that people have by virtue of being human. Recognising the equal worth of every human being means that we should be blind to considerations of this type when we impose a burden on someone or deprive someone of a benefit. Put differently, these are characteristics which should not play any role in any assessment as to whether it is right or not to treat someone less favourably". The Court decided that if an employer is treating some of the employees less well than others on grounds of religion, age, disability and sexual orientation, the employer is subjecting these individuals to unjust treatment and failing to respect their dignity and autonomy. The court decision also pointed out that the European Union's discrimination policy covers not just people who are disabled (or have a particular sex, race, religion, belief and age) but people who suffer discrimination because they are related or connected to disabled people (the case was about a mother accused by her employer of using her child as a way to manipulate requests for working time).

4. Romanian Constitution, the Romanian Civil and Criminal code

Romania has mentioned human dignity as a constitutional value. The Romanian Constitution adopted in 1991 mentions explicitly human dignity in two articles. In art. 1 para. 3, human dignity is mentioned together with the citizens' rights and freedoms, the free development of human personality, justice and political pluralism as supreme values. The second time, human dignity is mentioned in connection with fundamental rights, stating in art. 30 para. 6 that freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, and to the right to one's own image. In decision no. 1576/2011 the Romanian Constitutional Court showed that the human dignity is an inalienable attribute of the human person and in intrinsic value of the human being. The constitutional provisions regarding

dignity lead to normative acts for social protection [15]. After December 1989, when the communist regime was overturned, even before the new Constitution was adopted in 1991, Romania has considered the dignity of those oppressed for political reasons and adopted legislation for compensating the infringements committed upon the dignity of human beings in the case of former political prisoners [16]. The normative act was considered to restore, even if at a small scale, the dignity of those formerly oppressed².

The Criminal code which entered into force in 1968 strongly protected human self-esteem, honour and dignity, as insult, slander and libel were considered to be criminal offences, according to art. 205 and art. 206. Law no. 278/2006 abrogated art. 205 and art. 206 of the 1968 Criminal code. The main ideas mentioned in the statement of reasons for the adoption of Law no. 278/2006 were that limitation of the freedom of expression should be determined by ethical reasons rather than fear of punishment; that even if one's dignity is injured due to the exercise of the freedom of speech, a criminal punishment is disproportioned in respect to the general aim pursued when sanctioning such violations and that in case freedom of speech is abusively exercised, the injured party has the possibility of a civil remedy. We observe that all the reasons are related to freedom of speech [17]. Law no. 278/2006 was contested to the Constitutional Court, in connection with a press article, the contestator considering that once slander and libel were decriminalised the text of art. 30 para. 8 of the Constitution - saying that press offences are established by law - remained void as there is no law on the press. The Constitutional Court agreed and in the reasoning of the decision no. 62/2007 it showed that according to art. 1 para. 3 of the Romanian Constitution human dignity is among the supreme values and shall be guaranteed. The Constitutional Court appreciated that abrogating the articles that protected that value from the Criminal code created a legal vacuum, as no other legal protection is offered. It is to be mentioned that, at the time, Decree no. 31/1954 was in force, providing non-patrimonial ways for repairing injuries to the human dignity, such as the right to address the court in order to obtain the termination of the injurious act, the possibility to claim that the offender would publish the court decision on his own expenses, or to perform other activities that would restore the injured right, as well as art. 998 of the Civil code enforced in 1865 that allowed compensation by patrimonial means for a non-patrimonial injury. The Constitutional Court also decided that, as an effect of the unconstitutionality of art. I point 56 of Law no. 287/2006, art. 205 and art. 206 of the Criminal code re-entered into force. In another decision, no. 8/2013, the Constitutional Court expressed the opinion that human dignity will not be protected if insult, slander and libel are not incriminated as criminal offences. The decision also mentioned the limits to the freedom of expression set by art. 10 para. 2 of the ECHR and art. 19 para. 3 of the International Pact for Civil and Political Rights. The Constitutional Court argued that "ignominy by its nature cannot be repaired and

² Galați Court of Appeal, decision no. 339/2012.

human dignity cannot be priced nor compensated through material benefits"; decriminalisation of insult, slander and libel will set a lower standard for the protection of human dignity, against the Constitutional dispositions. A wide analysis of comparative legislation and solutions of the ECtHR, in respect with incrimination of insult, slander and libel as criminal offences, was also mentioned in the reasoning of decision no. 8/2013. The fact that the new Civil code (Law no. 287/2009), that entered into force in October 2011, provides protection for the inherent rights of the human being, such as dignity, one's own image and respect of private life, does not change the situation, as civil law means of repairing the injury were considered insufficient and inadequate.

A new Criminal code (Law 286/2009) entered into force in 2014. Insult, slander and libel are no longer criminal offences. In the new Criminal code, human dignity is mentioned several times. In art. 75 para. 1 letter a) extenuating circumstances are considered if the criminal offence was provoked by an injury to the offender's dignity. Art. 371 incriminates actions against human dignity that trouble the public order and peace (Toader & Tutunaru, 2009). The protection of human dignity is enhanced by the fact that degrading or inhuman treatment of others is considered an aggravating circumstance, for example by art. 263 letter c) concerning the traffic of migrants, art. 281 para. 2 regarding detention, art. 440 para. 1 letter h) regarding war crimes [18].

The Constitutional Court of Romania also gave value to art. 1 para. 3 in the decision no. 778/2009 when it was decided that the abrogation of letter f¹) from the art. 15 of the Law 146/1997, that exempted the judicial tax for actions seeking remedy against infringements to dignity and honour, was unconstitutional. The Constitutional Court considered that human dignity was no longer protected in a manner the Constitution provisions and art. 6 of the European Convention of Human Rights, regarding access to justice, intended.

In a recent decision, no. 33/2017, the Constitutional Court rejected a claim of non-constitutionality of art. 226 para. 1 from the Criminal code. The plaintiff argued that it is not constitutional to consider that photographing, capturing or recording images, listening with technical apparatus or audio-recording a person is to be considered a crime only if it only takes place in the person's home (considering the sense that the Criminal code is giving to the notion of „home”). The Constitutional Court reasoned that the Romanian legislation provided considerable attention to personality's rights, regulating in the Civil code the right to private life in art. 71 and art. 74, the right to one's image in art. 73 and the protection of non-patrimonial rights of the natural person in art. 257. Also, according to art. 1.357, the one who injures another is obliged to repair the prejudice even in the case of the slightest fault. The Constitutional Court concluded that Romania acted inside the margin of appreciation allowed by the ECHR and the case law of the ECtHR, when it chose not to incriminate the same actions performed in a public space.

Unfortunately, the debate regarding the balance between the freedom of expression and the protection of human dignity is revolving in Romania only around the freedom of the press. The legislator is forgetting that people attack one another often, and nowadays, under the protection of the anonymity offered by the virtual space the attacks seem to multiply. Damages to the human dignity can be devastating, especially among the young people, as statistics regarding cyberbullying show.

5. Conclusions

Human dignity is considered one of the most important values among human rights. Human dignity is in close relation with both social organisation and morals, as one evaluates dignity in relation with the values of the group one belongs to. Dignity can be a subjective as well as an objective value. Consciousness or the acceptance of acts that damage one's dignity do not change the perception of the group regarding an infringement of the value. International conventions and treaties consider human dignity and international courts base their jurisprudence on international legal norms that protect dignity in relation with other human rights, in a way that tends to form a universal understanding of the concept. The legal frame in Romania is formed by constitutional dispositions, international conventions regarding human rights, the European treaties and the mandatory European legal rules, as well as by the case law of the European courts (ECtHR and CJUE) which together form the „constitutionality block” and national legislation. The new Civil and Criminal codes consider human dignity to be an important human right and provide legal dispositions for protecting it. Nevertheless a better understanding of the legal concept of human dignity and the fact this is a source right for other human rights will result in better national legislation and better enforcement of the legal rules.

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