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THE RIGHT TO HUMAN DIGNITY IN WESTERN BALKANS

The right to human dignity is a cornerstone of modern constitutional structures. Accordingly, constitutions of the Western Balkans states (Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia) unequivocally confirm the importance and gravity of human dignity in their respective legal systems.

The paper wishes to analyse the normative and the judicial status of the right to human dignity in the Western Balkans. In its first part, the paper outlines national sets of laws pertinent to the right to human dignity. Along firm constitutional guarantees, the paper tries to exemplify provisions in separate legal frameworks addressing social and cultural diversity relative to the right to human dignity within the region.

In the second part, the paper analyses cases of the European Court of Human Rights (ECtHR) corresponding to human dignity in applications filed against the Western Balkans states. Special attention is given to judgments in which ECtHR found that the respective Government's appeal to the notion of dignity did not amount to its absolution in situations when violation of the Convention has been identified.

Keywords: human dignity, personal dignity, human rights, European Court of Human Rights, the Western Balkans.

1. INTRODUCTION

Faced with the horrors of WW2, the founders of the United Nations determined to establish an improved international system, deemed it essential to base this enhanced global structure on fundamental human rights: rights deriving from the *dignity* and *worth* of every human being as such.¹

The Allies' straightforward acknowledgment of the undisputed value of human dignity in the initial post-war international instruments, like the UN Charter (1945) or the Universal

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¹ UN. The Preamble of the United Nations Charter. Available at: <https://www.un.org/en/about-us/un-charter/full-text> (21. 6. 2023).

Declaration on Human Rights (1948)², their unequivocal recognition that “every human being is as worthy as every other human being” (Perry, 2023, p. 38), activated the insertion of ‘the right to human dignity’ within various treaties, declarations, and national constitutions.³ Consequently, for many authors human rights and human dignity have become essentially equivalent concepts (Pollis & Schwab, 1980, pp. 4, 8), while others kept arguing that human rights present only one path, a distinctive approach to the realisation of human dignity (Donnelly, 1982, p. 303). Nonetheless, all agreed on the importance of the concept as such.

The notion of human dignity has been thoroughly examined within the German legal theory, especially as it takes a prominent place in the Basic Law of the Federal Republic of Germany⁴. After its Preamble proclamations⁵, the very Article 1 of the German constitution stipulates that “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.”⁶ This central position of human dignity in German law is often interpreted in light of the fact that following the debacle of WW2, the adoption of its post-war Basic Law in 1949 ambioned to indicate a new constitutional order, a solid distance from the horrors of Nazism, “a sharp break from this immediate past”⁷ (Eberle, 2012, p. 203). It has been argued that in a legal system of relative values, human dignity is the only absolute one (Isensee, 2006, p. 175).

Human dignity is perceived as the cornerstone of all human rights. In addition, it is to be used as a guide to their interpretation. Recognised as a supreme value, it serves as a conceptual boundary in the limitation of human rights and freedoms, as well as a guide to settling constitutional value conflicts. Likewise, human dignity provides judicial review with a secure and legitimate basis (Botha, 2009, p. 171).

For Eberle (2012, p. 204) the concept of human dignity protected in Article 1 of the German Basic Law obligates the state to provide a basic minimal existence for citizens. In 1958 the German Federal Constitution Court found that “This value system, which finds its centre in the human personality and its dignity freely developing within the social community, must be applied as a constitutional axiom throughout the whole legal

² “All human beings are born free and equal in dignity and rights.” Article 1 of the Universal Declaration of Human Rights. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (25. 8. 2023).

³ The Charter of Fundamental Rights of the European Union (2000) declares in its preamble that “the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity”, with Article 1 stipulating that “Human dignity is inviolable. It must be respected and protected.” Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf (27. 8. 2023).

⁴ Grundgesetz für die Bundesrepublik Deutschland, *Bundesgesetzblatt*, 1, 1949.

⁵ The Preamble of the Basic Law of the Federal Republic of Germany expresses consciousness of national responsibility before God and men, as well as inspiration by determination to promote world peace. – “Im Bewußtsein seiner Verantwortung vor Gott und den Menschen, von dem Willen beseelt, als gleichberechtigtes Glied in einem vereinten Europa dem Frieden der Welt zu dienen, hat sich das Deutsche Volk kraft seiner verfassungsgebenden Gewalt dieses Grundgesetz gegeben.”

⁶ “(1) Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt.” – *Grundgesetz für die Bundesrepublik Deutschland*, Art. 1.

⁷ Comparable attempts to utilise the affirmation of human dignity as an indication of overall discontinuation from former regimes are identifiable in the constitutions of Greece (1975), Portugal (1976), Spain (1978), Namibia (1990), or South Africa (1993 and 1996).

system: it must direct and inform legislation, administration, and judicial decision. It naturally influences private law as well; no rule of private law may conflict with it, and all such rules must be construed in accordance with its spirit.”⁸

The inviolable and inalienable human rights acknowledged by the German constitution are founded on the notion of human dignity which is in itself perceived as an absolute concept. As such, it is ‘set apart’ as precluded from any possibility of being revised by constitutional amendments.⁹ However, this central point of human dignity in German legal system can every so often induce a misplaced assumption that it should serve as a panacea, a ‘magic wand’ “supposed to solve highly complex ethical questions such as those raised by new advances within the fields of biotechnology and human genetics” (Botha, 2009, p. 183).

So far there are no universally accepted definitions of the legal concept of human dignity. On that account, lawyers routinely resort to one of its highly influential explanations offered by Günter Dürig. Following the Kantian concept of ‘categorical imperative’¹⁰ by which humans are not to be treated as means to an end, but rather an end in itself, Dürig tries to explain the legal notion of human dignity contrasting it with degradation. Consequently, he argues that the violation of human dignity occurs when a person is reduced to a dispensable item, an object, a mere instrument (Dürig, 1956, p. 127).

This paper aims not to throw additional light on a notion of such complexity, as the right to human dignity unquestionably represents. An illustrious example of the length and the somewhat polysemous nature of the concept is found in the well-known *Wackenheim* case¹¹. Howbeit, a rather elegant definition of the concept has been offered by the justices of the Supreme Court of Canada, who found that “Human dignity means that an individual or group feels self-respect and self-worth.”¹²

This article presents a brief outline of constitutional and statutory provisions encompassing the notion of human dignity within the Western Balkans jurisdictions (Albania, Bosnia and Herzegovina, North Macedonia, Montenegro and Serbia), as well as a concise summary of a few ECtHR¹³ decisions related to the region, in which the concept of human dignity formed a part of the Court’s legal opinion.

⁸ *Lüth*, 7 BVerfGE 198, 205. 1958. Decision of the German Federal Constitutional Court (First Senate) of 15 January 1958. Available at: <https://www.servat.unibe.ch/dfr/bv007198.html> (21. 6. 2023). Available at: <https://germanlawarchive.iuscomp.org/?p=51> (last visited June 21 6. 2023).

⁹ “Eine Änderung dieses Grundgesetzes, durch welche die Gliederung des Bundes in Länder, die grundsätzliche Mitwirkung der Länder bei der Gesetzgebung oder die in den Artikeln 1 und 20 niedergelegten Grundsätze berührt werden, ist unzulässig.” – Art. 79(3) *Grundgesetz für die Bundesrepublik Deutschland*.

¹⁰ “There is, therefore, only a single categorical imperative and it is this: *act only in accordance with that maxim through which you can at the same time will that it become a universal law.*” – Kant, I. 2006. *Groundwork of the Metaphysics of Morals*. Cambridge: Cambridge University Press, p. 31.

¹¹ *Manuel Wackenheim v France* 2002, UN Human Rights Committee, Communication No. 854/1999, U.N. Doc. CCPR/C/75/D/854/1999

¹² *Law v. Canada (Minister of Employment and Immigration)*, 1999. The Supreme Court of Canada, [1999] 1 SCR 497, § 53.

¹³ The European Court of Human Rights in Strasbourg.

2. THE RIGHTS TO HUMAN DIGNITY IN WESTERN BALKANS JURISDICTIONS

2.1. *Constitutional Framework*

All Western Balkans constitutions include the notion of human dignity. Apart from general proclamatory provisions where the notion appears simultaneously with sovereign declarations confirming the rule of law, the protection of human rights, or even, endorsing the rules of market economy¹⁴, the majority of the constitutions within the region include further substantial provisions aimed at safeguarding human dignity in their respective jurisdictions.

2.1.1. *The Preamble*

The Preamble is often referred to as ‘the enacting clause’ of a constitution (Dodd, 1920, p. 638). Constitutional preambles delineate somewhat of ‘national creeds’, the constitutional faith of each country, its constitutional philosophy. Statements within preambles generally relate to national, political, even dogmatic ideals, based on the corpus of apparent inalienable rights, like liberty or human dignity (Orgad, 2010, p. 717).

Human dignity has been mentioned for the first time in the Preamble of the 1937 Constitution of Ireland, where the promotion of common good along with due observance of prudence, justice and charity have been declared as essential for the assurance of the dignity and freedom of individuals.¹⁵ In the Western Balkans, the notion of human dignity appears in the Preambles of the constitutions of Albania, Bosnia and Herzegovina, and the Republic of Srpska.

The Preamble of the Albanian Constitution pronounces a national pledge “to the protection of human dignity and personhood”¹⁶, conjointly with, *inter alia*, affirmations of national history, responsibility for the future, even faith in God. Similarly, the National Assembly of the Republic of Srpska declared adopting its national Constitution “upon the observance of human dignity”¹⁷, in addition to a number of various shared values, including freedom and equality of human individuals, equality of ethnic communities (both in accordance with international standards), the rule of law, social justice, pluralistic society, non-discrimination, etc.

The Constitution of Bosnia and Herzegovina is to an extent different. Its Preamble consists of nine recitals, establishing, *inter alia*, dedication to peace, justice, tolerance and reconciliation (recital 2), conviction that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralistic society (recital

¹⁴ The Preamble of the Constitution of the Republic of Srpska.

¹⁵ The Preamble of the 1937 Constitution of Ireland. Available at: <https://www.irishstatutebook.ie/eli/cons/en/html> (12. 9. 2023).

¹⁶ “[...] me zotimin për mbrojtjen e dinjitetit dhe të personalitetit njerëzor” – the Preamble of the Constitution of the Republic of Albania.

¹⁷ “[...] да уставно уређење Републике утемеље на поштовању људског достојанства” – the Preamble of the Constitution of the Republic of Srpska.

3), even determination to ensure full respect for international humanitarian law (recital 7). However, its ‘first line’, the Constitution’s initial proclamation is that it is “Based on respect for human dignity, liberty and equality”¹⁸

The Constitution of Bosnia and Herzegovina was defined by Annex IV of the Dayton Agreement¹⁹. As a post war fundamental legal instrument, one of its purposes (perhaps the primary one) was establishing peace and coexistence. In this respect, the notion of human dignity, no doubt aimed to become a part of the ‘basic structure’, the pillar of Bosnia and Herzegovina following a devastating armed conflict.

In this respect, certain parallels can be drawn between the Constitution of Bosnia and Herzegovina and the 1949 Basic Law of the Federal Republic of Germany. In accordance with its German model, the subsequent clauses of the ‘Dayton Constitution’ do not refer to the notion of human dignity. In both constitutions the concept is indicated only once, at the very opening of the instrument, and not once repeated.

2.1.2. Substantial Provisions

Nearly all Western Balkans jurisdictions²⁰ include a general clause with respect to the notion of human dignity. The right to human dignity is ‘inviolable’²¹ in constitutions of North Macedonia (Article 11 – *нејприкосновен*), the Republic of Srpska (Article 13 – *нејовређив*), and the Republic of Serbia (Article 23 – *нејприкосновено*). As far as the latter is concerned, the inviolability of human dignity is stipulated as a separate clause, specifying that it is to be respected and protected by all.²² Article 19 further outlines that each of the constitutional guarantees regarding inalienable human and minority rights bears the purpose of preserving human dignity and exercising full freedom and equality for every individual in a just, open, and democratic society based on the principle of the rule of law. In the first two constitutions, the right to human dignity is defined as inviolable together with other notions.²³

The Constitution of North Macedonia introduces two general clauses regarding dignity. In Article 11, after setting forth a general rule that the right to physical and moral dignity²⁴ is irrevocable, the clause includes a constitutional prohibition of any form of

¹⁸ “Oslanjajući se na poštovanje ljudskog dostojanstva, slobode i jednakosti [...] = Ослањајући се на поштовање људског достојанства, слободе и једнакости [...]” – the Preamble of the Constitution of Bosnia and Herzegovina.

¹⁹ The General Framework Agreement for Peace in Bosnia and Herzegovina, signed on December 14, 1995 in Dayton, OH (USA).

²⁰ With the exception of the constitutions of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

²¹ Equivalent with the German: *unantastbar*, in line with Article 1(1) of the German Basic Law.

²² „Људско достојанство је неприкосновено и сви су дужни да га поштују и штите.” – Article 23 of the Constitution of the Republic of Serbia.

²³ E.g., within the Constitution of the Republic of Srpska, human dignity is protected together with physical and spiritual integrity, personal privacy, personal and family life. – „Људско достојанство, тјелесни и духовни интегритет, човјекова приватност, лични и породични живот су неповредиви.” – Article 13 of the Constitution of the Republic of Srpska.

²⁴ The original text in Macedonian uses the term ‘integrity’ (интегритет), while the official English translation of the Constitution opts for ‘dignity’.

torture, inhuman or humiliating conduct or punishment, as well as forced labour.²⁵ Further, Article 25 provides a constitutional guarantee as to the respect and protection of privacy, personal and family life, dignity and reputation for all citizens.²⁶ Hence, the notion of *inviolability* is coupled with the protection of corporal and psychological inviolability of North Macedonian citizens, while a constitutional guarantee of the protection of dignity is associated with values such as privacy, family life, and reputation.

The Constitution of the Republic of Albania stipulates that the foundation of the Albanian state (*baza e këtij shteti*), together with its independence and the integrity of its territory are “the dignity of an individual, human rights and freedoms, social justice, constitutional order, pluralism, national identity and national heritage, religious coexistence, as well as the coexistence and understanding of Albanians with minorities.” The duty of the state is to respect and to protect each and every one of them (Article 3).²⁷

The Montenegrin Constitution (Article 28) sets forth a general constitutional guarantee as regards personal dignity and security.²⁸ Within the same Article, similarly to the North Macedonian Constitution, inviolability is prescribed in terms of the physical and mental integrity of an individual, along with personal privacy. The provision includes prohibition of torture or inhuman or degrading treatment, slavery and servile position. Article 25 on temporary limitation of rights and liberties during state of emergency determines that there can be no limitations imposed on, *inter alia*, dignity and respect of a person.

With the exception of those of Bosnia and Herzegovina, the Republic of Srpska and North Macedonia, remaining Western Balkans constitutions include provisions regulating the notion of human dignity in relation to some specific issues. For example, the constitutions of Albania, Montenegro and Serbia all include a clause stipulating that persons deprived of liberty must be treated humanely and with respect to their dignity (Albania)²⁹, personality and dignity (Montenegro)³⁰, or personal dignity (Serbia)³¹.

²⁵ „Физичкиот и моралниот интегритет на човекот се неприкосновени. Се забранува секој облик на мачење, нечовечко или понижувачко однесување и казнување. Се забранува присилна работа.” – Article 11 of the Constitution of the Republic of North Macedonia.

²⁶ „На секој граѓанин му се гарантира почитување и заштита на приватноста на неговиот личен и семеен живот, на достоинството и угледот.” – Article 25 of the Constitution of the Republic of North Macedonia.

²⁷ „Pavarësia e shtetit dhe tërësia e territorit të tij, dinjteti i njeriut, të drejtat dhe liritë e tij, drejtësia shoqërore, rendi kushtetues, pluralizmi, identiteti kombëtar dhe trashëgimia kombëtare, bashkëjetesa fetare, si dhe bashkëjetesa dhe mirëkuptimi i shqiptarëve me pakicat janë baza e këtij shteti, i cili ka për detyrë t’i respektojë dhe t’i mbrojë.” – Article 3 of the Constitution of the Republic of Albania.

²⁸ „Jemçi se dostojanstvo i sigurnost čovjeka.” – Article 28(1) of the Constitution of Montenegro.

²⁹ „Çdo person, të cilit i është hequr liria sipas nenit 27, ka të drejtën e trajtimit njerëzor dhe të respektimit të dinjtetit të tij.” – Article 28(5) of the Constitution of the Republic of Albania.

³⁰ „Jemçi se poštovanje ljudske ličnosti i dostojanstva u krivičnom ili drugom postupku, u slučaju lišenja ili ograničenja slobode i za vrijeme izvršavanja kazne.” – Article 31(1) of the Constitution of Montenegro.

³¹ „Према лицу лишеном слободe мора се поступати човечно и с уважавањем достојанства његове личности.” – Article 28(1) of the Constitution of the Republic of Serbia.

Section II B Article 2 of the Constitution of the Federation of Bosnia and Herzegovina, defining the office of the Ombudsman, stipulates that they³² are to protect human dignity, rights, and liberties as provided in the Constitution, in the instruments listed in the Annex thereto, and in the constitutions of Cantons. In Article 5 of the same Section, it is prescribed that the Ombudsman may examine the activities of any institution of the Federation, Canton, or Municipality, as well as any instruction or persons by whom human dignity, rights, or liberties may be negated, including by accomplishing ethnic cleansing or preserving its effects.

Montenegrin Constitution includes two provisions relating the notion of human dignity with bio-medicine³³ and the freedom of expression³⁴, while the Serbian Constitution specifies the notion of human dignity in connection with the right to work³⁵ and social protection.³⁶

2.2. Statutory Framework

The right to human dignity, apart from being regulated within respective constitutions of the Western Balkans jurisdictions is likewise present in a number of the region's statutes.

2.2.1. Rules of Procedure

The overall constitutional guarantee that any person deprived of liberty in legal proceedings must be treated with dignity, is further specified in all of the Western Balkans' criminal procedure rules. Thus, Article 157 of the Serbian Code of Criminal Procedure³⁷ sets forth that search of persons shall be carried out cautiously, with respect to the individuals' personal dignity and their right to privacy.³⁸ Similar provisions are present in other criminal procedure codes within the region, like that of Albania³⁹ where

³² According to Article 1 of Section II B of the Constitution, in the Federation of Bosnia and Herzegovina there are three Ombudsmen: one Bosniac, one Croat, and one Other.

³³ Article 27 sets forth that the dignity of a human being concerning the application of biology and medicine shall be guaranteed.

³⁴ Article 47 of the Montenegrin Constitution prescribes that the right to free speech may be limited only by the right of others to dignity, reputation and honour, as well as if it threatens public morality or the security of Montenegro.

³⁵ Article 60 stipulates that everyone shall have the right to the observance of personal dignity at work, together with safe and healthy working conditions, necessary workplace protection, limited working hours, daily and weekly rest, paid annual holiday, fair remuneration for work done and legal protection in case of termination of working relations. It is separately prescribed that no person may forgo these rights.

³⁶ Article 69(1) provides that citizens and families that require welfare for the purpose of overcoming social and existential difficulties and creating conditions to provide subsistence, shall have the right to social protection. Such provision is based on social justice, humanity and the respect of human dignity.

³⁷ Serbian Code of Criminal Procedure Code – Законик о кривичном поступку, *Службени тласник Републике Србије* бр. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – одлука УСС и 62/2021 – одлука УСС).

³⁸ „Претресање се врши обазриво, уз поштовање достојанства личности и права на интимност и без непотребног ремећења кућног реда.” – Article 157(1) of the Serbian Code of Criminal Procedure.

³⁹ The Code of Criminal Procedure of the Republic of Albania = Kodi i Procedurës Penale i Republikës së Shqipërisë, (ndryshuar me ligjet: nr. 7977, datë 26.7.1995, 8027, datë 15.11.1995, nr. 8180, datë 23.12.1996, nr. 8460, datë 11.2.1999, etc.).

legislation further stipulates that a search of a person shall be carried out by an official of a same sex, except where such search is impossible due to circumstances.⁴⁰ In Montenegro, apart from a statutory protection of human dignity during search of a person,⁴¹ the Code of Criminal Procedure⁴² prescribes that when gathering information from general public, the police shall respect their personality and dignity.⁴³

Civil procedure rules envisage a somewhat similar protection with respect to the notion of human dignity. For example, Article 228 of the Albanian Code of Civil Procedure⁴⁴ stipulates that during an examination of a person the court shall attend not to affect a given individual's personal dignity. If needed, the person in question can be substituted with a suitable expert witness.⁴⁵

Further, the implementation of coercive measures during enforcement of judgments across Western Balkans is carried out in a manner that safeguards the dignity of the enforcement debtor, in all actions performed by the courts or various enforcement agents.⁴⁶

2.2.2. Substantial Law

Within the Western Balkans' substantive laws, the notion of human dignity takes a number of differing forms within various acts of national parliaments. One such example is the region's anti-discrimination legislation. In line with the process of harmonisation of their national laws with *Acquis communautaire*, all across the region anti-discrimination legislation sets forth almost identical provisions prohibiting harassment and sexual harassment, as forms of violation of personal dignity.⁴⁷ Serbian legislation

⁴⁰ „Kontrolli bëhet duke respektuar dinjitetin dhe integritetin personal të atij që kontrollohet. Kontrolli i personit bëhet nga një person i së njëjtës gjini, me përjashtim të rasteve kur kjo nuk është e mundur për shkak të rrethanave.“ – Article 204(2) of the Code of Criminal Procedure of the Republic of Albania.

⁴¹ „Pretresanje stana i lica treba vršiti obazrivo, uz poštovanje ljudskog dostojanstva i prava na privatnost, bez nepotrebnog remećenja kućnog reda i uznemiravanja građana.“ – Article 81(7) of the Montenegrin Code of Criminal Procedure.

⁴² Zakonik o krivičnom postupku, *Službeni list CG*, br. 57/2009, 49/2010, 47/2014 – odluka USCG, 2/2015 – odluka USCG, 35/2015, 58/2015 – dr. zakon, 28/2018 – odluka USCG i 116/2020 – odluka USCG.

⁴³ „Obavještenja od građana ne smiju se prikupljati prinudno niti uz obmanu ili iscrpljivanje, a policija mora da poštuje ličnost i dostojanstvo građana.“ – Article 259(3) of the Montenegrin Code of Criminal Procedure.

⁴⁴ Kodi i Procedurës Civile i Republikës së Shqipërisë, Miratuar me ligjin nr.8116, datë 29.3.1996, etc.

⁴⁵ „Gjykata në këqyrjen e një personi duhet të bëjë kujdes që të mos preket dinjiteti personal. Ajo mund të mos jetë vetë e pranishme dhe të ngarkojë me këtë detyrë një ekspert të përshtatshëm.“ – Article 288 of the Civil Procedure Code of the Republic of Albania.

⁴⁶ E.g. „Приликом спровођења извршења суд ће пазити на достојанство извршеника.“ – Article 3(4) of the Enforcement Procedure Act of the Republic of Srpska = Закон о извршном поступку, *Службени гласник Републике Српске* бр. 59/2003, 85/2003, 64/2005, 118/2007, 29/2010, 57/2012 и 67/2013. „Приликом спровођења извршења суд и јавни извршитељ дужни су да воде рачуна о достојанству личности странке, учесника у поступку и чланова њихових породица.“ – Article 9 of the Montenegrin Enforcement and Security Interests Act = Закон о извршењу и обезбјеђењу, *Službeni list CG*, br. 36/2011, 28/2014, 20/2015, 22/2017, 76/2017 – odluka USCG i 25/2019.

⁴⁷ Neni 3 Ligji nr. 10221/2010 “Për mbrojtjen nga diskriminimi” – Shqipëria; Član 4 Zakona o zabrani diskriminacije – BiH; Član 7 Zakona o zabrani diskriminacije – Crna Gora; Член 10 Законот за

further the given framework with a provision stipulating that the elderly enjoy the right of dignified living conditions without discrimination.⁴⁸

Given terminological inconsistencies (e.g., dignity, human dignity, personal dignity, dignified conditions) is evident in various acts of the Western Balkans parliaments. In order to exemplify such diversity, the paper will now offer an analysis of the notion of human dignity within the region's employment law legislation.

2.2.3. Employment Laws' General Protection Clauses

Aside from Montenegro and the Republic of Srpska, all of the Western Balkans employment legislations include a general provision requiring a workplace-related rapport based on the respect of (human) dignity.

In 2015, thirty years following its enactment, the Labour Code of the Republic of Albania⁴⁹ set forth the employer's liability for the respect and protection of the employee's personality in all work relations, and to act in a manner that prevents any attitude leading to the violation of employee's dignity (Article 32). Similarly, Article 7 of the 2016 Employment Act⁵⁰ of the Federation of Bosnia and Herzegovina sets forth an overall clause stating that the employer shall define the place and the manner of the work assigned with respect to the rights and dignity of employees.

The 2005 North Macedonian Employment Relations Act⁵¹ has been amended on a number of occasions, as well as thoroughly scrutinised many a time by the national Constitutional Court. At its very beginning (Article 2), the Act defines as one of its objectives, *inter alia*, observing employees' right to freedom to work, their dignity and the protection of employees' interests arising from employment. Further, Article 43 of the Act provides a general obligation for the employer to both protect and respect the personality and the dignity of an employee, as well as to take into account and to protect her or his privacy.

The 2005 Serbian Employment Act⁵² sets forth that one of the elementary rights of employees, apart from corresponding salary, safety and health at work, health-care protection, various rights in the event of illness, reduction or loss of work ability and old age, is the right to personal dignity (Article 12).

спречување и заштита од дискриминација – Северна Македонија; Члан 12 Закона о забрани дискриминације – Србија.

⁴⁸ „Старији имају право на достојанствене услове живота без дискриминације, а посебно, право на једнак приступ и заштиту од занемаривања и узнемиравања у коришћењу здравствених и других јавних услуга.” – Article 23(2) of the Serbian Prohibition of Discrimination Act.

⁴⁹ Kodi i Punës i Republikës së Shqipërisë, ligj Nr. 7961, datë 12.7.1995. Amendments enacted by Act no. 136/2015, Dec 5, 2015 (Ndryshuar me ligjin nr. 136/2015, datë 5.12.2015).

⁵⁰ The Employment Act of the Federation of Bosnia and Herzegovina – Zakon o radu, *Službene novine FBiH* br. 26/2016, 89/2018, 23/2020 – odluka US, 49/2021 – dr. zakon, 103/2021 – dr. zakon i 44/2022.

⁵¹ Закон за работните односи, *Службен весник на Република Македонија* бр. 62/2005; 106/2008; 161/2008; etc.

⁵² Закон о раду, *Службени гласник Републике Србије* бр. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – одлука УС, 113/2017 и 95/2018 – аутентично тумачење).

2.2.4. Specific Employment Law Provisions

As regards rules dealing with specific issues related to the notion of (human) dignity, all Western Balkans's employment legislations include provisions prohibiting harassment, sexual harassment, and mobbing.

Workplace related harassment has a common regional statutory definition as any unwelcome behaviour caused by discrimination, aiming at or amounting to the violation of an employee's or job seeker's dignity, and which as such generates fear and creates a hostile, degrading or offensive environment.⁵³ The 2019 Montenegrin Employment Act expands the given definition stipulating that besides behaviour caused by direct or indirect discrimination, harassment can occur by audio and video surveillance, mobile devices, social media and the Internet.⁵⁴

The 1995 Labour Code of the Republic of Albania prohibits the employer or other employees from harassing an employee with actions aimed at or resulting in the working conditions' degradation, to such a degree that it may lead to the violation of the rights and dignity of the person, to the impairment of employee's physical or mental health or to the detriment of his/her professional future.⁵⁵ The same Article, in line with other regional employment laws⁵⁶, sets forth that an employee stating to be the victim of harassment presents facts considering the harassment, while the burden of proof is on the person to whom the complaint is addressed in order to substantiate that her/his

⁵³ „Вознемирување, во смисла на овој закон, е секое несакано однесување предизвикано од некој од случаите од членот 6 на овој закон кое има за цел или претставува повреда на достоинството на кандидатот за вработување или на работникот, а кое предизвикува страв или создава непријателско, понижувачко или навредливо однесување.” – Член 9(3) *Закон за работнишките односи*.

„Uznemiravanje u smislu stava 1. ovog člana je svako neželjeno ponašanje uzrokovano nekim od osnova iz člana 8. ovog zakona koje ima za cilj ili predstavlja povredu dostojanstva radnika i lica koje traži zaposlenje, a koje uzrokuje strah ili neprijateljsko, ponižavajuće ili uvredljivo okruženje.” – Član 9(2) *Zakona o radu* (Federacija BiH).

„Узнемиравање у смислу става 1 овог члана јесте свако нежељено понашање узроковано неким од основа из члана 19 овог закона које има за циљ или представља повреду достојанства лица које тражи запослење, као и радника, а које изазива страх или ствара понижавајуће или увредљиво окружење.” – Члан 24(2) *Закон о раду* (Република Српска).

„Узнемиравање, у смислу овог закона, јесте свако нежељено понашање узроковано неким од основа из члана 18 овог закона које има за циљ или представља повреду достојанства лица које тражи запослење, као и запосленог, а које изазива страх или ствара непријателско, понижавајуће или увредљиво окружење.” – Члан 21(2) *Закон о раду* (Република Србија).

⁵⁴ „Uznemiravanje, u smislu ovog zakona, jeste svako neželjeno ponašanje uzrokovano nekim od osnova iz čl. 7 i 8 ovog zakona, kao i uznemiravanje putem audio i video nadzora, mobilnih uređaja, društvenih mreža i interneta, koje ima za cilj ili čija je posljedica povreda ličnog dostojanstva lica koje traži zaposlenje, kao i zaposlenog, a koje izaziva odnosno ima namjeru da izazove strah, osjećaj poniženosti ili uvrijeđenosti, ili stvara odnosno ima namjeru da stvori neprijateljsko, ponižavajuće ili uvredljivo okruženje.” – Član 10(2) *Zakona o radu* (Crna Gora).

⁵⁵ „Punëdhënësi ndalohet të ngacmojë punëmarrësit me veprime, të cilat kanë për qëllim ose sjellin si pasojë degradimin e kushtevetë punës, në një shkallë të tillë që mund të çojë në cenimin e të drejtave dhe dinjtetit të personit, në dëmtimin e shëndetit të tij fizik ose mendor ose në dëmtimin e të ardhmes së tij profesionale.” – Neni 32(3) *Kodi i Punës i Republikës së Shqipërisë*.

⁵⁶ E.g., Article 23(2) of the Serbian Employment Act.

actions were not aimed at harassment, as well as to show such objective elements that can exclude harassment or disturbance.⁵⁷

Sexual harassment is defined as any verbal, non-verbal or physical behaviour aiming at or amounting to the violation of employee's or job seeker's dignity in terms of sexuality, and which causes fear or creates a hostile, degrading or offensive environment.⁵⁸ In addition to prohibiting sexual harassment, the Employment Act of the Republic of Srpska prohibits any form of gender-based violence.

Albanian employment legislation defines sexual harassment as any unwanted form of behaviour expressed in words or physical and/or symbolic actions of sexual nature, which is intended or results in the violation of personal dignity, in particular when creating a threatening, hostile, humiliating, contemptuous or offensive environment, and which is carried out either by the employer against an employee or a jobseeker, or occurring among employees themselves.⁵⁹

Finally, the statutory definition of mobbing within the majority of Western Balkans jurisdictions is styled as any repetitive behaviour towards an employee or a group thereof, aimed at or representing violation of an employee's dignity, reputation, personal and professional integrity, or position. Such conduct can generate fear or it can create a hostile, humiliating, or offensive environment that deteriorates working conditions or induces an employee's isolation and/or constructive dismissal.⁶⁰

Employment legislations within Bosnia and Herzegovina, as well as North Macedonia, specify mobbing as a specific form of non-physical workplace related harassment, which implies repeating actions where one or more persons psychologically abuse and

⁵⁷ „Punëmarrësi që ankohet se është ngacmuar në një ngamënyrat e parashikuara në këtë dispozitë, duhet të paraqesë fakteqë provojnë ngacmimin e tij dhe më pas i takon personit, ndaj të cilit adresohet ankesa, të provojë se veprimet e tij/saj nuk kishin për qëllim ngacmimin, si dhe të tregojë elementet objektive, të cilat nuk kanë të bëjnë me ngacmimin ose shqetësimin.” – Neni 32(5) *Kodi i Punës i Republikës së Shqipërisë*.

⁵⁸ „Сексуално узнемиравање, у смислу овог закона, јесте свако вербално, невербално или физичко понашање које има за циљ или представља повреду достојанства лица које тражи запослење, као и запосленог у сфери полног живота, а које изазива страх или ствара непријатељско, понижавајуће или увредљиво окружење.” – Члан 21(3) *Закон о раду* (Република Србија).

„Сексуално узнемиравање, у смислу става 1 овог члана јесте свако вербално или физичко понашање које има за циљ или представља повреду достојанства лица које тражи запослење, као и радника у сфери полног живота, а које изазива страх или ствара понижавајуће или увредљиво окружење.” – Члан 24(3) *Закон о раду* (Република Српска).

⁵⁹ „Shqetësim seksual është çdo formë e padëshiruar sjelljeje, e shprehur me fjalë ose veprimefizike e simbolike, me natyrë seksuale, e cila ka për qëllim ose sjellsi pasojë cenimin e dinjitetit personal, në mënyrë të veçantë kurkrijon një mjedis kërcënues, armiqësor, poshtërues, përçmues osefyes, që kryhet nga punëdhënësi kundrejt një punëmarrësi, njëpunëkërkuasi për punë ose midis punëmarrësve.” – Neni 32(2) *Kodi i Punës i Republikës së Shqipërisë*.

⁶⁰ „Zabranjen je svaki oblik zlostavljanja na radnom mjestu (mobing), odnosno svako ponašanje prema zaposlenom ili grupi zaposlenih kod poslodavca koje se ponavlja, a ima za cilj ili predstavlja povredu dostojanstva, ugleda, ličnog i profesionalnog integriteta, položaja zaposlenog koje izaziva strah ili stvara neprijateljsko, ponižavajuće ili uvredljivo okruženje, pogoršava uslove rada ili dovodi do toga da se zaposleni izoluje ili navede da na sopstvenu inicijativu otkaže ugovor o radu.” – Član 14(1) *Zakona o radu* (Crna Gora).

humiliate another person, aiming to undermine that person's reputation, honour, dignity, integrity, working conditions or professional status.⁶¹

Finally, though the North Macedonian Employment Act adheres to the regional statutory definitions of non-physical workplace related harassment, it additionally sets forth a minimum time of six months for such a behaviour to amount as mobbing.⁶²

2.2.5. Individual Employment Law Provisions

The 2019 Montenegrin Employment Act specifies that in the event of unjust dismissal, the aggrieved employee is entitled to claim non-economic damages in situations when the termination of employment violated her/his personal rights, honour, reputation, or dignity.⁶³

The North Macedonian Employment Relations Act introduces another quite unique measurement within the region, prescribing a statutory fine of 7,000 euros for any employer formed as legal entity, in the event of failing to protect and respect the personality, dignity and privacy of an employee or for failing to ensure the protection of employees' personal information.⁶⁴

3. THE NOTION OF DIGNITY IN ECtHR COURT PRACTICE WITH RESPECT TO THE WESTERN BALKAN JURISDICTIONS

The European Court of Human Rights in Strasbourg (ECtHR) invoked the notion of human dignity in few of its decisions with respect to the Western Balkans jurisdictions, though the 1950 Convention does not include provisions regarding the concept itself.⁶⁵

⁶¹ „Mobing predstavlja specifičnu formu nefizičkog uznemiravanja na radnom mjestu koje podrazumijeva ponavljanje radnji kojima jedno ili više lica psihički zlostavlja i ponižava drugo lice, a čija je svrha ili posljedica ugrožavanje njegovog ugleda, časti, dostojanstva, integriteta, degradacija radnih uvjeta ili profesionalnog statusa.” – Član 9(5) *Zakona o radu* (Federacija BiH).

„Мобинг је специфичан облик понашања на радном мјесту, којим једно или више лица систематски, у дужем периоду, психички злоставља или понижава друго лице с циљем угрожавања његовог угледа, части, људског достојанства и интегритета.” – Члан 24(5) *Закона о раду* (Република Српска).

⁶² „Психичко вознемирување на работно место (мобинг), во смисла на овој закон, е секоје негативно однесување од поединец или група кое често се повторува (најмалку во период од шест месеца), а претставува повреда на достоинството, интегритетот, угледот и честа на вработените лица и предизвикува страв или создава непријателско, понижувачко или навредливо однесување, чија крајна цел може да биде престанок на работниот однос или напуштање на работното место.” – Член 9-а(3) *Закон за работниот однос*.

⁶³ „Ако се у поступку из става 1 овог члана утврди да је отказ имао за последицу повреду права личности, чести, угледа и достојанства, запослени има право на накнаду нематеријалне штете, у законом предвиденом поступку.” – Члан 180(8) *Закон о раду* (Crna Gora).

⁶⁴ „Глоба во износ од 7.000 евра, во денарска противвредност ќе му се изрече за прекршок на работодавач - правно лице, ако [...] не ги штити и почитува личноста, достоинството, приватноста на работникот и не се грижи за заштита на личните податоци на работникот (членови 43 ставови (1) и (2) и 44 ставови (1), (2), (3) и (4)).” – Член 264(1)(3) *Закон за работниот однос*.

⁶⁵ The recitals of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances signed in Vilnius in 2002,

Cases in which the ECtHR resorted to the notion of human dignity concerned claims of alleged violations with respect to prohibition of torture (Article 3), the right to respect for private and family life (Article 8), and freedom of expression (Article 10).

3.1. Prohibition of Torture

The NGO Helsinki Committee for Human Rights in Skopje (HCHR) brought a case⁶⁶ before the ECtHR on behalf of an eight-year-old child (initials: L.R.) with moderate mental disabilities, severe physical disabilities (cerebral palsy) and a speech impediment. The child had been in the care of state-run institutions since he was three months old. In 2013, North Macedonia's Ombudsman visited a state-run institute and found L.R. tied to his bed, which subsequently gave rise to the NGO's interest in his case.⁶⁷

The ECtHR found that an inadequate treatment which the applicant received was made worse by the fact that he was tied to his bed at night and frequently during the day. It is particularly worrying that such a 'measure', which in itself is incompatible with human dignity, was used for approximately a year and nine months in respect of an eight-year-old child (§ 80).

Hence, the ECtHR found that the authorities, which were under an obligation to safeguard the applicant's dignity and well-being, are responsible under Article 3 of the Convention for his inappropriate placement, lack of requisite care and the inhuman and degrading treatment that he experienced therein (§ 82).

3.2. Right to Respect for Private and Family Life

In *Špadijer v. Montenegro*⁶⁸ the applicant reported five of her colleagues for indecent behaviour at work on New Year's Eve. As established later in disciplinary proceedings, some of the male guards had entered the women's prison and one of them had had 'physical contact' with two inmates there, which had been tolerated by some of the female guards. Subsequent to the report, the applicant was intimidated and antagonised by her colleagues by telephone, having the front windscreen of her car broken in front of the building where she lived, etc. Following the disciplinary action in which the reported colleagues were fined, the applicant experienced continuous insults and humiliation at work which were causing health problems. Eventually, she was even assaulted in a car park where she was collecting her daughter after her classes with the attacker approaching her from behind and inflicting several blows on the back of her neck and the lower part of her back, and around the left elbow and the thighs. When leaving, the attacker told her: "Be careful what you're doing."

include an introductory declaratory statement of being "[c]onvinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings".

⁶⁶ *L.R. v. North Macedonia* 2020, ECtHR, Application no. 38067/15.

⁶⁷ Available at: <https://strasbourgobservers.com/2020/02/27/who-can-represent-a-child-with-disabilities-before-the-ecthr-locus-standi-requirements-and-the-issue-of-curator-ad-litem-in-l-r-v-north-macedonia/> (30. 6. 2023).

⁶⁸ *Špadijer v. Montenegro* 2021, ECtHR, Application no. 31549/18.

The Court of First Instance in Podgorica ruled against the applicant in civil proceedings. Though considered her submissions to be true, and finding that the applicant's psychological problems were related to conflict at work, the court considered that the events complained of did not amount to bullying as they had lacked the necessary frequency. The decision was upheld by superior courts.

The ECtHR found that the domestic courts made no attempt to establish how often incidents had been repeated and over what period, or to examine them individually and taken together with the other incidents. They also failed to consider the context and the alleged background to the incidents. The ECtHR cannot overlook the applicant's allegation that the acts of harassment to which she was subjected were in reaction to her reporting the alleged illegal activities of some of her colleagues and were aimed at silencing and 'punishing' her (§ 97).

Finally, the ECtHR found that the manner in which the civil and criminal-law mechanisms were implemented in the particular circumstances of the applicant's case, in particular the lack of assessment of all the incidents in question and the failure to take account of the overall context, including the potential whistle-blowing context, was defective to the point of constituting a violation of the respondent State's positive obligations under Article 8 of the Convention (§ 101).

3.3. Freedom of Expression

The case⁶⁹ of *Bodrožić and Vujin v. Serbia*⁷⁰ arose out of the two applicants' criminal convictions who were at the time journalists for the weekly local newspaper.

In April 2004, the first applicants published an article criticizing the domestic courts for imposing criminal sanctions against him and another journalist for their alleged offense of defamation. He also implicitly compared the attorney who prosecuted the cases to a blonde woman. In the same issue, the second applicant was the editor of the newspaper's comics column in which the prosecuting attorney's name was inserted next to a photograph of an unclothed blonde woman.

Shortly after the publication, the attorney brought a criminal defamation action against the applicants for their alleged insults. The Municipal Court found the applicants guilty and fined each of them with EUR 150. The court held that the publication resulted in insulting the attorney because it objectively humiliated him through comics that crossed the acceptable boundaries. The District Court upheld the convictions.

In a unanimous decision, the ECtHR found that the criminal conviction of the applicants was not a necessary inference with their freedom of expression under Article 10(2) of the European Convention on Human Rights. Regarding the content of the article, the Government submitted that "comparison of men to women, especially to blonde ones, constituted an attack on the personal integrity and dignity of men, as understood in the social environment which prevails in the respondent State" (§ 21).

⁶⁹ The description of facts in this section is based on information available at: <https://globalfreedomofexpression.columbia.edu> (30. 6. 2023).

⁷⁰ *Bodrožić and Vujin v. Serbia* 2009, ECtHR, Application no. 38435/05.

The ECtHR reasoned that the entirety of the text being humorous in content and published under the newspaper's *Amusement* column, cannot be understood otherwise than as a joke rather than a direct statement maliciously aimed at offending the attorney's dignity (§ 33). Further, the ECtHR was struck [*sic*] by the argument of the domestic courts, as later endorsed by the Government, that "comparing an adult man to a blonde woman constituted an attack on the integrity and dignity of men. Moreover, the domestic authorities considered such a comparison objectively insulting within their society. However, the Court finds that argument derisory and unacceptable" (§ 35).

In the case of *Lepojić v. Serbia*⁷¹ the applicant wrote an article that was published in the local newspapers during an election campaign. The applicant questioned the local mayor's position, given that he had been excluded from the party and because of his alleged misconduct while he was president of a state-run company. The applicant called the mayor "near-insane" due to his spending of the municipality's money on gala dinners, sponsorship, etc.

After the article was published, the mayor pressed criminal charges against the applicant, who was found guilty of defamation. This decision was confirmed by an appellate court. Domestic courts considered the applicant's accusations to be unfounded and defamatory since they were not supported by facts. Subsequently, the mayor filed a separate complaint seeking non-economic damages for mental anguish he claimed to have suffered due to the publication of the article. The court awarded the mayor with nearly 2,000 EUR monetary compensation. The award was upheld by an appellate court. With a 5:2 majority, the ECtHR confirmed that there had been a violation of Article 10 of the European Convention.

The domestic courts found, *inter alia*, that that criticism could not consist of untrue statements which "deeply offend" one's "honour, reputation and dignity"; and that the honour, reputation and dignity of the mayor, as an elected official and Director of a very successful local company, "had more significance than ... [the honour, reputation and dignity] ... of an ordinary citizen" (§ 16). In its decision, the ECtHR specifically expressed such reasoning of domestic courts to be 'dubious' and 'not necessary in a democratic society' (§ 78).

4. CONCLUSION

Though having a centuries-old philosophical, theological, social and even cultural tradition, the notion of human dignity has become legally relevant only after the WW2 experience. The savage brutality of the Nazi regime forced the international community to aspire for a global system that rests on a concept genuine enough to restrain the omnipotence of national lawmakers. Accordingly, human dignity has evolved into a notion surpassing state sovereignty, gradually becoming a standard, a (legal) measure of legislation and court practice. In effect, human dignity became the basis of inviolable and inalienable human rights.⁷²

⁷¹ *Lepojić v. Serbia* 2007, ECtHR, Application no. 13909/05.

⁷² The supreme position of human dignity in international relations has experienced a notable decline following the 9/11 attacks, being if not replaced than to an extent deteriorated by the public demand of

Problems of incorporating wide philosophical, even idealistic concepts into a narrow legal context are almost self-evident (Kirste, 2013). This inherent challenge in judicial implementation of human dignity is further intensified by the fact that the legal community has not so far developed a somewhat internally recognised definition of such a far-reaching concept. One of the possible solutions is an attempt to delineate human dignity *ex contrario*, i.e., instead of formulating what the right to human dignity is, jurisprudence tries to mark degrees of humiliation and degradation that in themselves amount to violation of human dignity as such. An additional dilemma rests on a debate whether human dignity is one of the subjective individual rights, or an objective norm within the corpus of human rights.⁷³

The standard practice of incorporating the notion of human dignity in national constitutions and statutes is present in all of the Western Balkans jurisdictions. In accordance with universally acknowledged standards, it is styled as a both inviolable and inalienable concept, imposing a clear duty of a given state to respect and protect it as a general rule. A rather commonplace invocation of human dignity simultaneously with various constitutional values (e.g., the rule of law, democracy, liberty, etc.) is to an extent distinct in relation to the Constitution of Bosnia and Herzegovina, where human dignity takes the prominent place as its first recital. Such legal structure resembles the practice introduced by the German Basic Law of 1949, in which human dignity was used to mark a clear institutional detachment from immediate past.⁷⁴

Substantial provisions related to human dignity in region's constitutions are associated with usual constitutional guarantees e.g., freedom of expression, social protection, prohibition of torture, inhuman or humiliating conduct, etc. In some cases, special attention is given to the protection of human dignity of persons deprived of liberty in criminal and other judicial proceedings. A few Western Balkans constitutions utilise the notion of human dignity in a manner that is by some authors referred to as using state and international security. Though examples of violations of human rights and human dignity have been accounted for before September 11, 2001 (e.g., the Tuskegee Syphilis Study, or the Vietnam war massacres) the Guantanamo Bay detention camp example might be perceived as a landmark of a clear conceptual shift. The notion of human dignity, though regarded as an absolute value, has run into a competing counter-value: the security of the world as we know it. Legal ramifications of such change can be detected in statutes like the subsequently repealed UK Anti-terrorism, Crime and Security Act 2001, or the legal opinion of the German Federal Constitutional Court in its 2006 decision (BVerfGE 115, 118) that shooting down a plane with only terrorists on board would not violate the terrorists' dignity, and that the infringement of their right to life was proportionate to the protection of innocent lives. It seems that the 'permanent war for permanent peace' slogan is becoming more and more persuasive in modern world, especially in the context of migration crisis, COVID-19 pandemics, or the ongoing Russo-Ukrainian War.

⁷³ This paper is predicated on the assumption that human dignity belongs to the group of objective norms within the human rights corpus. To say that 'human dignity is a human right' would be as erroneous as to suggest that 'to have an arm is a human right'. Ontological features of human beings (and human dignity is one such feature) cannot be understood as subjective rights as the latter are, for example, limited by the principle of proportionality. Human dignity is an absolute value, and it cannot be constrained either by actions of a given individual, or by human dignity of fellow persons. Each and every human being is inherently characterised by her or his human dignity.

⁷⁴ The German Basic Law is based on the notion of human dignity in order to clearly mark that in this respect the new German state renounces the former 'dignity of the Reich'.

the concept like a 'magic wand', a solution for complex social and ethical questions, e.g., bio-medicine (Montenegro), or even in relation to the Office of the Ombudsman (Federation of Bosnia and Herzegovina).

The region's statutory framework follows the constitutional manner of reproducing various international legal instruments in respective national legislations. E.g., an obligation of a state to protect the dignity of people involved in various judicial and administrative procedures, with special attention given to the defendants, is a general rule present as a universal standard in modern civilisation. Likewise, various EU law directives⁷⁵ are almost to the letter incorporated in national legislation of Western Balkans jurisdictions. E.g., all of the region's statutes stipulate a somewhat carbon-copy definitions of harassment, sexual harassment and mobbing in their employment law legislation, as they are laid down by the EU law.

A common feature of each national legal framework within Western Balkans in connection with the notion of human dignity is its widespread and repetitive terminological inconsistency in various legal instrument. The concept is often interchangeably referred to as 'dignity', 'personal dignity', 'human dignity', 'dignity of an employee', 'dignified living conditions', etc. It might be argued that such variety of verbalisations in connection with a unique legal concept is a result of various legislative formulations used in previous constitutions and statutes.⁷⁶ It seems only prudent to reach a national consensus of the notion and to adopt its uniform verbal formula throughout a given national legal system.

According to some authors such terminological diversity is not a mere coincidence. For Mattson & Clark (2011, p. 306) the Western conception of human dignity and its relation to human rights as embraced by individualist cultures (Europe, North America) is not widely accepted in communitarian cultures. The latter lean to emphasize peoples' duties and obligations rather than their rights, with dignity arising from the fulfilment of these obligations, and generally involving acknowledgment by others. In this context, personal dignity is construed around notions of honour, and it is subject to being violated through public acts that diminish the standing of the self, since it is always measured in relation to others.

This paper follows an assumption that communitarian societies prioritise the notion of *collective dignity* in which *personal dignity* derives from the community's acknowledgment that one's personal contributions to the common good brings about her or his (social) reward styled as reputation. Hence, the concept of personal dignity corresponds with the standing of a member in relation to the group, as acknowledged by the whole.

⁷⁵ E.g., Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; 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; 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.

⁷⁶ E.g., The Constitution of the Socialist Federal Republic of Yugoslavia (1974); the Constitution of the Federal Republic of Yugoslavia (1992); various national criminal and civil procedure regulations, employment law legislation, etc.

To the contrary, *human dignity* requires no additional merit other than being a member of the human race. Ergo, human dignity is intrinsic – it is not a potential, a possibility a virtuous personality might obtain if adhering to the common good (*personal dignity*); it is a trait no human being can ever be deprived of, irrespective of the damage she or he has caused to fellow humans.

The analysis of the selected ECtHR court practice demonstrates that within the Western Balkans region, state's duty to respect and protect human dignity, especially in relation to vulnerable social groups where such protection is indispensable, asks for genuine institutional improvements.

It should be noted that in all of the cases presented, violations of human dignity occurred in a workplace context, regardless of the status human dignity occupies in all of the region's employment legislations. Namely, it was the personnel of in state-run institutions who violated human dignity of individuals that were unable to defend themselves properly, or were unable to protect themselves at all. An institutional torture effectuated as state negligence and dehumanization was brought upon an eight-year-old abandoned child with a severe medical condition,⁷⁷ while a victim of a work place related harassment was a female employee in a predominantly male working environment (prison).⁷⁸

Likewise, cases involving freedom of expression were in a clear connection with works of professionals, i.e., journalists were charged on account of their articles published in local newspapers. These two cases⁷⁹ even demonstrate an attempt of public officials to misuse the notion of human dignity by asserting that in given circumstances they were the victims of humiliation, i.e., their right to human dignity was violated in given newspaper articles. The ECtHR firmly rejected such misuse of the notion of human dignity by state officials.

In conclusion, it seems important noting that there are more and more attempts of reversing the so far acknowledged social functions of human rights. The initial ideal of observing the dignity of all men through the concept of human rights originated with the French Revolution whose attempt was to protect the vulnerable, i.e., the marginalised social groups (women, children, minorities). However, in our day and age, we come across resounding voices asserting their right not to be immunised by a vaccine in a pandemic surrounding, or the right to disregard the ongoing climate change, based solely on the protection of human dignity effectuated as every individual's right of choice. It seems that these and similar questions shall have to be answered in times to come.

⁷⁷ *L.R. v. North Macedonia* 2020, ECtHR, Application no. 38067/15.

⁷⁸ *Špadijer v. Montenegro* 2021, ECtHR, Application no. 31549/18.

⁷⁹ *Bodrožić and Vujin v. Serbia; Lepojić v. Serbia*.

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