

HUMAN DIGNITY IN EUROPEAN CRIMINAL LAW: LEGAL CONSTRAINT BETWEEN ETHICAL IDEAL AND CULTURAL PLURALISM

Svetlana Nenadić, PhD.
Public Prosecutor
First Basic Public Prosecutor's Office
in Belgrade, Serbia
Kataniceva 15, Belgrade,
Serbia
svetlananenadic11@gmail.com
ORCID: 0009-0004-1379-0926

Marina Matić Bošković, PhD.
Senior Research Fellow
Institute of Criminological and
Sociological Research, Belgrade
Gračanička 18., Belgrade
Serbia
m.m.boskovic@roldevelopmentlab.com
ORCID: 0000-0003-1359-0276

The current paper is part of a research endeavour funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, conducted by the Institute of Criminological and Sociological Research, (based on the contract No. 451-03-33/2026-03 / 200039) with the Ministry of Science, Technological Development and Innovation of the Republic of Serbia.

Submitted: 23 April 2025
Accepted: 23 February 2026
Published: 01 August 2026

Abstract: *The article explores the principle of human dignity in criminal law in Europe, with a focus on its application in the jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). As one of the core values underpinning modern democratic societies, human dignity plays a crucial role in guiding the interpretation and development of legal norms, including those in the field of criminal law. Although not always explicitly codified, it remains a powerful interpretative tool that influences judicial reasoning and the constitutional identity of European legal orders. This paper provides a doctrinal and comparative analysis of how human dignity is respected, interpreted, and enforced in criminal proceedings, drawing on landmark decisions from the ECtHR and CJEU, and situating them within broader European legal, cultural, and philosophical traditions. By emphasising the normative force of dignity, the article illustrates how it functions as a constraint on punitive power and as a benchmark for legal legitimacy.*

Key words: *Human Dignity; Criminal Law; Jurisprudence; Cultural Pluralism; Principles of Law*

Suggested citation:

Svetlana Nenadić and Marina Matić Bošković, 'Human Dignity in European Criminal Law: Legal Constraint Between Ethical Ideal and Cultural Pluralism' (2026) 10(1) *Bratislava Law Review* 73
<https://doi.org/10.46282/blr.2026.10.1.1025>

1. INTRODUCTION

The principle of respect for human dignity, although often absent from the explicit text of national criminal codes, operates as a core unwritten source of law that profoundly shapes the development and interpretation of criminal justice systems across Europe. As a core normative value, human dignity transcends positive law and informs the interpretation, application, and development of legal norms, particularly in systems influenced by constitutional and supranational human rights frameworks. Within legal theory, dignity is increasingly understood not only as a moral or philosophical concept,

but also as a binding legal standard that shapes state obligations and individual protections.¹

Despite its unwritten character, the principle of dignity exerts legal force through its integration into constitutional traditions, general principles of law, and international human rights instruments. In several jurisdictions, such as Germany, human dignity is explicitly enshrined as an inviolable constitutional right. In other contexts, such as in Serbia and other post-socialist legal systems, dignity is embedded implicitly within guarantees of personal liberty, humane treatment, and the rule of law.² The omnipresence of this value across diverse legal cultures supports the thesis that dignity functions as an overarching norm that grounds the legitimacy of legal and penal authority.³

In the field of criminal law, the influence of human dignity is particularly salient. It provides both substantive and procedural constraints on the exercise of punitive state power, requiring that criminal sanctions be proportionate, humane, and oriented towards the moral worth of the individual.⁴ Dignity operates as a counterweight to excessive penalism, ensuring that punishment respects the inherent value of all persons, including offenders. It also informs procedural rights, including fair trial guarantees, the presumption of innocence, and protection against arbitrary detention or ill-treatment.⁵

Moreover, the relevance of dignity has grown with the expansion of European integration and the evolving jurisprudence of supranational courts. Although dignity is not enumerated as a separate right in the European Convention on Human Rights (ECHR), it has become a central interpretative concept for understanding the scope of protected rights, particularly under provisions that concern the treatment of individuals by state authorities.⁶ In EU law, the Charter of Fundamental Rights affirms human dignity as a core principle from which other rights derive, thereby solidifying its normative dominance in the European legal order.⁷

The principle of human dignity contributes to the moral and legal legitimacy of the criminal justice system. It reinforces the view that law should be an instrument of justice and human flourishing, rather than of repression or exclusion. Even when unwritten, this principle holds normative force and is deeply embedded in judicial culture, academic discourse, and legal reasoning, making it an indispensable part of the modern criminal law framework.

As this article will demonstrate, the growing reliance on dignity in the jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) suggests a trend towards embedding dignity more deeply in the architecture of criminal law. This article argues that within European criminal law, human dignity operates as a legal constraint situated between two structurally different

¹ Aharon Barak, *Human Dignity: The Constitutional Value and the Constitutional Right* (Cambridge University Press 2015) 12.

² Damir Suto, 'The Right to Human Dignity in Western Balkans' (2023) 4 *Regional Law* 49, 51 https://doi.org/10.56641/iup_rlc.2023.4.ch4 accessed 27 June 2026.

³ Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19(4) *European Journal of International Law* 655, 710 <https://doi.org/10.1093/ejil/chn043> accessed 27 June 2026.

⁴ Antony Duff, *Punishment, communication and community* (Oxford University Press 2013).

⁵ Natasha Mavronicola, 'What is an "absolute right"? Deciphering absoluteness in the context of Article 3 of the European Convention on Human Rights' (2015) 15(4) *Human Rights Law Review* 723, 732 <https://doi.org/10.1093/hrlr/ngs020> accessed 27 June 2026.

⁶ George Letsas, 'The ECHR as a living instrument: Its meaning and legitimacy' in A Follesdal, B Peters and G Ulfstein (eds), *Constituting Europe: The European Court of Human Rights in a National, European and Global Context* (Cambridge University Press 2013) 106.

⁷ Catherine Dupré, *The Age of Dignity: Human Rights and Constitutionalism in Europe* (Oxford, Hart Publishing 2015) 66.

domains: the ethical ideal of unconditional respect for personhood and culturally contingent understandings of honour, humiliation, and moral worth. Criminal law cannot fully absorb either moral philosophy or cultural diversity; instead, it translates dignity into enforceable limits on state coercion. It is precisely this constraining function that gives dignity its specific legal meaning in European criminal justice. By examining the role of dignity, this article contributes to broader scholarly debates on the foundations of legal authority, the protection of fundamental rights, and the evolution of European criminal law.

2. CONCEPTUAL FOUNDATIONS OF HUMAN DIGNITY IN CRIMINAL LAW

The concept of human dignity exists as a moral category as well as a legal norm. In this concept, ethics and law meet in a pervasive manner. The legal interpretation of human dignity in jurisprudence confirms the need for philosophically rigorous explications of various concepts that figure prominently in discourse about law.⁸

Human dignity is not an unambiguous concept. It has changed throughout history, and it is culturally determined. We may talk about four stages in the development of the idea of human dignity.⁹ In the period of classical antiquity, starting from a cosmocentric approach, Cicero described dignity as a part of nature. The Christocentric approach in the medieval period explained human dignity in relation to Christ. Kant represented the logocentric framework of modernity, explaining human dignity as a tribute to reason. Postmodernity seeks a connection between human dignity and social acceptability.

Kant's logocentric approach holds that a person can never be treated merely as a means to an end; they must always be regarded as an end in themselves, with their own reasoned motives deserving equal respect. The freedom of a person to choose between good and evil implies dignity and the right not to be instrumentalised or manipulated. Therefore, some authors conclude that Kant's philosophy is the closest conceptual framework for the concept of human dignity embedded in law.¹⁰

In contemporary philosophy of law, the concept of human dignity occupies a significant place. Some authors regard human dignity, as a fundamental value concept of modern law,¹¹ others as the ultimate source of all rights,¹² or as a central organising principle in the idea of universal human rights.¹³ Finally, Dworkin observes that anyone who professes to take rights seriously must accept the vague but powerful idea of human dignity.¹⁴

However, it remains unclear what the legal nature of dignity as a legal norm is, whether it is a general principle of law, whether it is a directly applicable subjective right,

⁸ Kenneth Einar Himma, 'Conceptual Jurisprudence, An Introduction to Conceptual Analysis and Methodology in Legal Theory' (2015) 26 *Revus* 1, 2 <https://journals.openedition.org/revus/3351> accessed 25 June 2026.

⁹ Mette Lebeck, 'What is Human Dignity?' (2003) 2 *Maynooth Philosophical Papers* 59, 60 <https://doi.org/10.5840/mpp200428> accessed 27 June 2026.

¹⁰ Duska Franeta, *Ljudsko dostojanstvo kao pravna vrednost* [Human Dignity as a Legal Value] (Pravni fakultet Univerziteta u Beogradu 2015) 313.

¹¹ Franeta (n 10) 310.

¹² Roberto Andorno, 'Human Dignity and Human Rights' in Henk ten Have and Bert Gordijn (eds), *Handbook of Global Bioethics* (Springer 2014) 49.

¹³ McCrudden (n 3) 675.

¹⁴ Ronald Dworkin, *Taking Rights Seriously* (Cambridge University Press 1977) 198.

or whether it serves as an interpretative tool assisting judges in their endeavour to resolve constitutional value conflicts.¹⁵

Human dignity cannot be empirically demonstrated or defined, nor is there an explicit definition in legal documents; yet it has been generally assumed that a violation of human dignity can be recognised, even if the abstract term cannot be defined: "I know it when I see it, even if I cannot tell you what it is."¹⁶ It is similar to the sense of justice. Justice and dignity are intuitively cognisable, because a person knows unerringly when injustice or humiliation is done. There is another connection between justice and dignity. The violation of dignity causes a sense of injustice.¹⁷

In the criminal law context, the concept of human dignity plays a dual role: as a limit to state punitive power and as a basis for the rights of suspects, accused persons, and convicted individuals. It restricts inhumane forms of punishment, guides the interpretation of legal norms, and supports the procedural fairness of criminal proceedings.

Criminal justice carries an inherent risk of violating human dignity because it is based on coercion, and any coercion diminishes dignity.¹⁸ On the other hand, criminal law represents the last line of defence for the protection and restoration of human dignity, because human dignity is a protected legal interest of criminal law. Thus, the human dignity concept is of essential importance for criminal justice, for human dignity is simultaneously protected and threatened by criminal law. As a largely positivised value and right, both internationally and domestically, the concept of human dignity is today in the hands of the judiciary,¹⁹ and judges in criminal courts and prosecutors have to study and understand the concept of human dignity.

From the point of view of substantive criminal law, human dignity is a protected object, and some forms of humiliation are defined as criminal behaviour. However, substantive criminal law carries risks of serious violations of dignity, especially through various forms of criminal sanctions and models of their execution, as well as the trend towards overcriminalisation. We are also facing some new challenges in the sphere of criminalisation, such as privacy in the electronic age, security threats, AI and bioethics issues, and the alarming demand for preventive and pre-emptive action in criminal law.

Criminal procedural law has the fundamental task of avoiding all mechanisms that could lead to the instrumentalisation and objectification of the accused, thereby violating his/her psychological, social, and mental integrity. If criminal proceedings were to lead to a violation of the dignity of the accused, then they would turn into the humiliation of the accused, thereby rendering the criminal proceedings illegitimate, and the criminal prosecution, instead of leading to punishment, would lead to retaliation. Since justice excludes humiliation,²⁰ any proceedings based on humiliation would be inherently unjust.

¹⁵ Marcio Staffen and Mher Arshakyan, 'About the Principle of Dignity: Philosophical foundations and Legal Aspect' (2017) 75 *Revista Sequencia* 43., 44 <https://doi.org/10.5007/2177-7055.2017v3875p43> accessed 27 June 2026.

¹⁶ Oscar Schachter, 'Human Dignity as a Normative Concept' (1983) 77 *The American Journal of International Law* 848, 849.

¹⁷ Michael Pritchard, 'Human Dignity and Justice' (1972) 84(4) *Ethics* 299, 301.

¹⁸ Radomir Lukić, *Sistem filozofije prava* [A System of the Philosophy of Law] (Beograd 1992) 477.

¹⁹ Miodrag Jovanovic, 'Legal Validity and Human Dignity – On Radbruch's Formula' (2013) 137 *Archiv für Rechts- und Sozialphilosophie – Beihefte* 145, 168.

²⁰ Jovan Babic, 'The Right to Human Dignity' in Z Pavlović (ed), *Yearbook Human Rights Protection – The Right to Human Dignity* (Provincial Protector of Citizens, Institute of Criminological and Sociological Research 2020) 27, 29.

Humiliation is arguably even more indeterminate than dignity itself and is profoundly context-dependent. While moral philosophy may conceptualise humiliation as a communicative act that marks a person as not on a par with others in terms of human dignity,²¹ criminal law cannot transform every moral wrong into a legal violation. The law needs to take a stand on what really constitutes significant damage, what a reasonable person would and would not find grounds for anger.²² Thus, it operates through normative thresholds that delineate the boundary between legitimate state coercion and legally impermissible degradation. In this framework, human dignity functions as a legal constraint on punitive power, ensuring that the individual is not reduced to a mere object of state enforcement.

In addition to coercion, criminal proceedings have another characteristic that can pose a risk to human dignity. The balance of power between the parties in criminal proceedings suffers from an inherent inequality. The public prosecutor has immeasurably greater power than the accused because he has state resources and social authority. Since justice requires equality, and the principle of equality implies that the possible prosecutor's win must not come from his superiority, but from the strength of the evidence, criminal proceedings require the establishment of mechanisms that will level out the inequality between the parties. Those mechanisms are equality of arms and the presumption of innocence.

Equality of arms is the principle of the equal distribution of rights between the prosecutor and the defence, which protects the fairness of the trial, the *Prinzip der Waffengleichheit*,²³ and it serves as a favour defensionis mechanism. The presumption of innocence is nothing more than the levelling of the initial inequality between the public prosecutor and the defendant, or the deliberate overturning the scales²⁴ and the creation of a normative obligation for the prosecutor and the judge to respect the dignity of the accused by establishing his/her assumed innocence.

The presumption of innocence includes several procedural rights and principles, such as the burden of proof, the standard of proof, the privilege against self-incrimination and the right to remain silent, as well as impartiality and the prohibition of stigmatisation of the defendant. These procedural rights and principles protect the defendant from being instrumentalised and are thus closely connected with the obligation of the authorities to protect the dignity of the defendant. Respecting the dignity of the defendant implies the obligation of impartiality, understood as the absence of prejudice and preconceptions. Any prejudice or preconception about the defendant essentially means the nullification of his/her dignity, because deliberation in the categories of prejudice and preconceptions, through the prism of stereotypes, denies the defendant's personal identity.

²¹ Martha C. Nussbaum, *Hiding From Humanity. Disgust, Shame and the Law* (Princeton University Press 2004) 204.

²² Nussbaum (n 21) 7-8.

²³ Hans-Heinrich Jescheck, 'Principles of German Criminal Procedure in Comparison with American Law' (1970) 56(2) *Virginia Law Review* 239, 246.

²⁴ Barbara Hudson, *Justice and Security in the 21st century: Risks, Rights and the Rule of Law* (Routledge 2012) 207.

3. HUMAN DIGNITY IN THE JURISPRUDENCE OF THE ECtHR AND THE CJEU

The ECtHR has played a pivotal role in elaborating the legal contours of human dignity within the context of European human rights law.²⁵ While the European Convention on Human Rights (ECHR) does not explicitly enumerate dignity as a standalone right, the ECtHR has consistently recognised it as a foundational value underpinning the Convention as a whole.²⁶ The ECtHR's jurisprudence demonstrates that human dignity is not only implicit in the guarantees provided by the Convention but is also a guiding interpretative principle in the protection of fundamental rights.²⁷ The ECtHR has emphasised that human dignity forms the 'very essence' of the ECHR, often serving as the interpretative backbone for Convention rights.²⁸

The CJEU, while less frequently addressing criminal matters directly, has nonetheless played a critical role in affirming human dignity as a general principle of EU law. The CJEU has held that dignity is one of the fundamental values of the EU legal order, enshrined in Article 1 of the Charter of Fundamental Rights of the European Union.

Taken together, the ECtHR and the CJEU contribute significantly, albeit through different institutional and doctrinal pathways, to the evolving jurisprudence on human dignity in Europe. Their case law collectively shapes an unwritten but increasingly concrete understanding of dignity in criminal law, bridging procedural safeguards, the prohibition of ill-treatment, and the need for humane conditions of detention and justice.

3.1 Dignity and Article 3 of the ECHR

Article 3 of the ECHR enshrines the absolute prohibition of torture and of inhuman or degrading treatment or punishment. Though the concept of human dignity is not explicitly mentioned in the text of Article 3, the ECtHR has interpreted this provision as inherently grounded in respect for human dignity. This interpretative approach has allowed the ECtHR to develop a rich jurisprudence that treats dignity as both a normative foundation and a guiding principle in assessing the treatment of individuals in the context of criminal justice.

In the landmark case of *Tyrer v. the United Kingdom* (App. no. 5856/72), the ECtHR held that the judicial corporal punishment of a schoolboy violated Article 3 because it undermined human dignity. The ECtHR acknowledged that such punishment was socially and legally accepted within the jurisdiction of the Isle of Man at the time, but emphasised that the ECHR is a 'living instrument' that must be interpreted in the light of evolving standards of decency (para. 31). The ECtHR concluded that the punishment was degrading and incompatible with respect for human dignity. This judgment marked a significant turning point in the ECtHR's approach, embedding the value of dignity in its interpretation of ill-treatment, even in the absence of express reference to the term in the ECHR.

Over time, the ECtHR has expanded its Article 3 jurisprudence to cover a broad range of factual contexts in which dignity plays a central role. In *Selmouni v. France* (App.

²⁵ Marina Matić Bošković, 'Human dignity in criminal proceedings – interpretation of the European Court of Human Rights' in Z Pavlović (ed), *Yearbook Human Rights Protection – The Right to Human Dignity* (Provincial Protector of Citizens, Institute of Criminological and Sociological Research 2020) 61, 65.

²⁶ Sebastian Heselhaus and Ralph Hemsley, 'Human Dignity and the European Convention of Human Rights' in P Becchi and K Mathis (eds), *Handbook of Human Dignity in Europe* (Springer 2018) 1, 21.

²⁷ George Letsas (n 6), 106, 109.

²⁸ Natasa Mavronicola, 'Güler and Öngel v Turkey: Article 3 of the ECHR and Strasbourg's call for a culture of human rights policing' (2015) 15(3) *Human Rights Law Review* 606 <https://doi.org/10.1111/146-2230.12016> accessed 27 June 2026.

no. 25803/94), the ECtHR found that the applicant, who was subjected to police beatings and humiliation during custody, had been tortured within the meaning of Article 3. The ECtHR stressed that treatment violating human dignity could cross the threshold into torture depending on its intensity and duration, thereby elevating dignity from an implied value to a definitional element of torture and ill-treatment.

Similarly, in *Kalashnikov v. Russia* (App. no. 47095/99), the ECtHR considered the conditions of detention, overcrowding, inadequate hygiene, and lack of personal space as amounting to degrading treatment, despite the absence of direct physical violence. The ECtHR emphasised that the cumulative effect of poor conditions could erode the detainee's human dignity and was sufficient to violate Article 3.

A significant reaffirmation of dignity's centrality under Article 3 came in *Bouyid v. Belgium* (App. no. 23380/09), where the ECtHR held that even a single slap by the police can amount to degrading treatment, as such conduct is incompatible with respect for dignity. The Grand Chamber reiterated that any physical assault by state agents on an individual in custody is inherently disrespectful to human dignity and, as such, incompatible with Article 3.²⁹ This was true regardless of the severity of the physical harm inflicted; what mattered was the symbolic and psychological impact of such conduct on the dignity of the individual (paras. 100-102).

Through these cases, the ECtHR has developed an evolving standard whereby dignity operates not only as a background value but also as a normative lens for interpreting violations of Article 3. The ECtHR's insistence on upholding dignity aligns with the broader European consensus on the sanctity of the individual and serves as a bulwark against both systemic and individual abuses within the criminal justice system.

Meanwhile, the CJEU has approached dignity from a slightly different angle, treating it as a foundational value of the European Union legal order and a source of general principles of EU law. In *Omega Spielhallen v. Oberbürgermeisterin der Bundesstadt Bonn* (Case C-36/02), the CJEU upheld a national restriction on laser tag games that simulated killing, reasoning that the prohibition was justified by the need to protect human dignity as recognised under German constitutional law. The CJEU found that the restriction did not violate EU market freedoms because the protection of dignity constitutes a legitimate interest capable of justifying limitations under EU law. This judgment marked an important acknowledgement of dignity as a value shared by EU law.

3.2 Dignity and Fair Trial Guarantees (Article 6 ECHR)

The principle of human dignity not only underpins the prohibition of inhuman or degrading treatment under Article 3 of the ECHR but also resonates deeply within the right to a fair trial enshrined in Article 6. Although Article 6 does not explicitly mention dignity, the ECtHR has repeatedly underscored that respect for the inherent dignity of the individual is a prerequisite for a fair trial.

Fairness in this context is not understood merely in formal or procedural terms. Rather, it extends to substantive considerations of how the accused is treated within the justice system, both during the investigative phase and throughout the trial. The ECtHR's jurisprudence has made it increasingly clear that degrading, coercive, or excessively intrusive treatment of defendants can contaminate the integrity of the judicial process, thereby violating Article 6.

²⁹ Natasa Mavronicola, 'Bouyid v Belgium: The 'Minimal Level of Severity' and Human Dignities Role in Article 3 ECHR' (2020) 1(1) *European Convention of Human Rights Law Review* 105, 108.

One of the most significant examples of the ECtHR's dignitarian approach to Article 6 is *Jalloh v. Germany* (App. no. 54810/00). In this case, the applicant, suspected of drug trafficking, was forcibly administered emetics to induce vomiting and retrieve evidence that he had allegedly swallowed. The procedure, conducted without his consent, caused significant physical and psychological suffering. The ECtHR held that this measure violated both Article 3 and Article 6 of the ECHR. The treatment was deemed to be inhuman and degrading, and, crucially, the evidence obtained through such coercion was used against the applicant at trial.

The ECtHR concluded that the fairness of the trial had been irreparably compromised, noting that the integrity of the justice system could not be upheld through evidence obtained by means that violate human dignity (paras. 105-108). According to the ECtHR, 'the public interest in securing the applicant's conviction could not justify recourse to such a grave interference with his physical and mental integrity or the admission into evidence of the material obtained thereby (para. 107). Thus, the case illustrates the intrinsic link between dignity and the concept of fairness under Article 6.

Further clarification of this approach was provided in *O'Halloran and Francis v. the United Kingdom* (App. nos. 15809/02 and 25624/02), where the applicants were compelled to provide self-incriminating information under threat of penalty. While the ECtHR held that no violation had occurred in that specific instance, it emphasised that compelled testimony must respect the dignity and autonomy of the individual, reaffirming that fair trial guarantees must be viewed through a lens of respect for the individual's moral and legal agency (para. 57).

Similarly, in *Ibrahim and Others v. the United Kingdom* (App. nos. 50541/08, 50571/08, 50573/08, and 40351/09), the Grand Chamber addressed the issue of access to legal counsel during the early stages of police questioning. The ECtHR emphasised that the right to a fair trial must be considered in the light of the need to protect vulnerable individuals from abusive treatment and ensure that they are able to exercise their rights in a manner that affirms their dignity and autonomy (paras. 255-258).

In *Konstas v. Greece* (App. no. 53466/07), the ECtHR examined the interplay between the presumption of innocence under Article 6(2) of the ECHR and the protection of human dignity. The case concerned public statements made by state officials which, even before a conviction, implied the applicant's guilt in the context of ongoing criminal proceedings. The ECtHR emphasised that the presumption of innocence is not merely a procedural guarantee, but one that also protects the individual's dignity and reputation from being undermined by premature judgements. It noted that public authorities must refrain from making declarations that portray someone as guilty before they have been proved so by a court of law. In this regard, the ECtHR explicitly linked dignity to the integrity of the individual in public discourse, reinforcing that respect for dignity requires restraint and neutrality from the state, particularly when a person is under criminal investigation but not yet convicted. *Konstas v. Greece* thus illustrates that violations of the presumption of innocence can also amount to an affront to human dignity, especially when state action leads to public stigmatisation without due process.

These cases reinforce the notion that procedural guarantees under Article 6 are not isolated from the overarching value of human dignity. In fact, the effectiveness of these guarantees depends on their implementation in a manner that affirms the humanity and personhood of the individual.³⁰

³⁰ Marina Matić Bošković, 'Uređenje procesnih prava osumnjičenih i okrivljenih u pravnim tekovinama Evropske unije [Regulation of Procedural Rights of Suspect and Accused Person in the European Union Acquis]' (2020) 64(1) *Strani pravni život* 29 <https://doi.org/10.5937/spz64-25003> accessed 27 June 2026.

From the perspective of EU law, the right to a fair trial is protected under Article 47 of the Charter of Fundamental Rights of the EU, which guarantees an effective remedy and a fair and public hearing. Article 48 further affirms the presumption of innocence and the right of defence. While the CJEU has not developed as expansive a body of criminal procedure jurisprudence as the ECtHR, it has increasingly engaged with issues of fairness and dignity in the context of procedural rights.

Notably, in *Case C-612/15 Kolev and Others* (2018), the CJEU highlighted that national procedural rules must ensure that defendants are treated fairly and are not subjected to arbitrary or degrading treatment, which could impair their ability to mount a defence. This reflects an evolving commitment to integrating dignity into the procedural architecture of EU criminal law, particularly in the implementation of directives on procedural safeguards for suspects and accused persons.

The dignitarian turn in both ECtHR and CJEU jurisprudence signals a recognition that legal procedures are not merely technical instruments but reflect the values and ethics of the justice system. A trial that violates a person's dignity is not merely unfair; it calls into question the legitimacy of the justice system itself.

3.3 Human Dignity and Sentencing

The principle of human dignity functions as a normative boundary that restricts the types and severity of criminal sanctions that states may impose. Rooted in broader human rights jurisprudence, dignity ensures that punishment respects the inherent worth of the individual, thereby excluding penalties that are cruel, degrading, or disproportionate. In the ECtHR's jurisprudence, dignity is increasingly referenced, explicitly or implicitly, as a foundational principle in evaluating whether certain sentencing practices are consistent with democratic values and fundamental rights.³¹

In the landmark case of *Vinter v. the United Kingdom* (App. nos. 66069/09, 130/10, and 3896/10), the ECtHR ruled that whole-life sentences without the possibility of release or review violate Article 3 of the ECHR, as they remove hope and the possibility of rehabilitation.³² The removal of all possibility of release was deemed a denial of hope and therefore an affront to human dignity, particularly when the legal system provides no mechanism for sentence review (paras. 110-122).

A similar concern with proportionality and respect for dignity was raised in *Murat Vural v. Turkey* (App. no. 9540/07), where the applicant had been sentenced to over 22 years in prison for non-violent political graffiti on public statues. The ECtHR found the sentence manifestly disproportionate and concluded that it violated the applicant's rights under Article 10 (freedom of expression) in conjunction with Article 3. The ECtHR highlighted that penal responses must account not only for the seriousness of the offence but also for the need to affirm the humanity and dignity of the offender (paras. 60-67).

These decisions underscore the moral underpinnings of sentencing practices and demonstrate how dignity operates not merely as a philosophical concept but as a constitutional and judicial constraint. Sentencing must align with the goals of criminal justice, punishment, deterrence, and rehabilitation, while never forsaking the offender's

³¹ Lewis Graham, 'From Vinter to Hutchinson and Back Again? The Story of Life Imprisonment Cases at the European Court of Human Rights' (2018) 3 *European Human Rights Law Review* 258, 260 <https://doi.org/10.2139/ssrn.4087763> accessed 27 June 2026.

³² A similar explanation regarding the right to rehabilitation in the context of human dignity and life imprisonment was provided by the ECtHR in the case of *Harckchiev and Tolumov v. Bulgaria* (App. nos. 15018/11 and 61199/12, judgement of 8 July 2014).

intrinsic worth. The ECtHR's evolving approach to sentencing reflects a broader European consensus that punishment devoid of proportionality and possibility of reformation undermines the legitimacy of the penal system.³³

3.4 Mutual Recognition Instruments

The principle of mutual recognition is a cornerstone of judicial cooperation in criminal matters within the European Union.³⁴ However, its application has been subject to growing scrutiny where fundamental rights, especially human dignity, are at risk.³⁵ The CJEU has repeatedly affirmed that mutual trust between Member States is not absolute and must be conditioned upon respect for fundamental rights as guaranteed under the Charter of Fundamental Rights.

A pivotal case in this area is *Aranyosi and Căldăraru* (Joined Cases C-404/15 and C-659/15), where the CJEU ruled that an executing judicial authority must postpone the execution of a European Arrest Warrant (EAW) if there is a real risk that the person concerned would be subjected to inhuman or degrading treatment due to poor detention conditions in the issuing Member State. The CJEU emphasised that the individual's dignity must be preserved throughout the process, thus setting a rights-based limit on automatic mutual recognition.

This approach was further reinforced in *Dorobantu* (Case C-128/18), where the CJEU specified that national courts must assess, in detail, whether detention conditions comply with Article 4 of the Charter and Article 3 of the ECHR. The CJEU required executing authorities to seek additional information and guarantees if there is a serious risk to the individual's human dignity, thereby reinforcing the position that human rights, and dignity in particular, act as substantive checks on mutual trust.

In *LM* (C-216/18 PPU), the CJEU addressed whether a person could be surrendered under an EAW to a Member State (Poland) where judicial independence was being questioned. The CJEU held that systemic or generalised deficiencies in the rule of law can, in exceptional cases, affect the individual's right to a fair trial, thereby potentially violating human dignity and preventing surrender under EU law.

These cases illustrate a significant development in EU criminal law, where the value of human dignity serves not only as a moral guideline but also as a concrete legal threshold that must be met in the context of judicial cooperation. By imposing a duty on national courts to scrutinise the human rights implications of extradition and surrender requests, the CJEU has positioned dignity as a cornerstone of transnational criminal justice within the EU.³⁶

4. DIGNITY BETWEEN UNIVERSALISM AND CULTURE

While some judges and scholars speak of a shared "lingua franca" of dignity, closer analysis across the Council of Europe reveals a wide spectrum of meanings.³⁷ Dignity is, first and foremost, a cultural category that law recognises and channels

³³ Dirk van Zyl Smith and Sonja Snacken, *Principles of European Prison Law and Policy: Penology and Human Rights* (Oxford University Press 2009) 95, 99.

³⁴ Auke Willems, *The Principle of Mutual Trust in EU Criminal Law* (Hart Publishing 2021) 48.

³⁵ Marina Matić Bošković, *Krivično procesno pravo EU [EU Criminal Procedure Law]* (Institute of Criminological and Sociological Research 2022) 166.

³⁶ Steve Peers, *EU Justice and Home Affairs Law* (4th edn, Oxford University Press 2020) 655.

³⁷ Veronika Fikfak and Lora Izvorova, 'Language and Persuasion: Human Dignity at the European Court of Human Rights' (2022) 22(3) *Human Rights Law Review* 1, 23 <https://doi.org/10.1093/hrlr/ngac018> accessed 27 June 2026.

through human rights norms and interpretative patterns. As a result, the understanding, application, and justification of dignity in legal reasoning are culturally contingent. Courts therefore face a constant task: striking a balance between a universalist conception of dignity and respect for cultural diversity.

Several cultural cleavages shape these differences. In much of Western Europe, dignity is predominantly individualistic and closely associated with equal rights and liberal democratic commitments. By contrast, many post-socialist systems accord dignity a pronounced collective dimension; for example, the Ukrainian Criminal Code criminalises the "humiliation of national honour and dignity" (Art. 161 of the Ukrainian Criminal Code). European legal cultures also tend to align dignity with secular egalitarianism, whereas in some Islamic legal traditions, equal dignity does not automatically translate into identical rights across all domains (Art. 6 of the Cairo Declaration on Human Rights in Islam).

What counts as humiliating or degrading plainly varies across cultures. Yet this does not license relativism. There is strong cross-cultural convergence on a core proposition: humiliation and degradation violate human dignity, even if the practices that constitute such treatment differ.³⁸ In democratic societies, two key principles frame a universal approach in criminal law: (1) those in power bear a special duty not to demean ordinary citizens, and (2) dignity must be most rigorously protected when the state exercises its coercive authority through investigation, prosecution, and punishment.³⁹

Cultural contingency, however, generates two legal challenges. Doctrinally, absent clear national or regional guidance, divergent dignity readings can undermine legal certainty. Politically, efforts at unification risk being perceived as the top-down imposition of Western standards in settings with different constitutional cultures, weakening legitimacy.

The European Court of Human Rights (ECtHR) has developed its most coherent dignity-centred doctrine in two domains. First, under Article 3 ECHR, dignity functions as the animating principle of the absolute prohibition of torture and inhuman or degrading treatment or punishment. The Court has extended Article 3 to cover disproportionate force against arrestees and detainees, the use of restraints on seriously ill persons, and detention conditions such as overcrowding, poor sanitation, or lack of natural light.⁴⁰ The consistency and breadth of this case law have led some commentators to suggest that practice has effectively created an "Article 3 bis".⁴¹ Second, dignity operates as a touchstone for fairness under Article 6 ECHR. A fair trial is not merely a set of procedures; it is a commitment to ensuring that the accused is never instrumentalised as a mere means to evidentiary ends. Principles such as equality of arms, the presumption of innocence, the privilege against self-incrimination, and limits on coercive evidence-gathering all serve to protect the dignity of the defendant. Put simply, a proceeding that humiliates cannot be fair; the state, as the immeasurably stronger party, must be constrained from treating the accused as an object, whether through torture-tainted testimony or disproportionate medical interventions to obtain evidence.

Where a robust doctrine is still crystallising, the ECtHR often deploys dignity as a persuasive and pedagogical resource, an argumentative register that can, over time, become doctrinal. Empirical work suggests that dignity appears most frequently in contexts of systemic non-compliance, where the Court seeks to nudge states towards reform not only through conventional legal analysis but also through language that

³⁸ Michael Rosen, *Dignity, Its History and Meaning* (Harvard University Press 2012) 127.

³⁹ Rosen (n 38) 75.

⁴⁰ Fikfak and Izvorova (n 37) 11.

⁴¹ Fikfak and Izvorova (n 37) 7.

appeals to the moral principle of humanity.⁴² As Judge Costa put it, "The Court is not merely adjudicating cases: it also has a pedagogical role, and by referring to dignity it thereby sends important signals to all respondent states."⁴³

This didactic legalism is especially visible in sentencing. Two controversies frame the Court's approach. First, the ECtHR is not a fourth-instance tribunal tasked with re-sentencing; it intervenes only where human rights thresholds are crossed. Second, punishment carries expressive cultural functions, and the margin of appreciation reflects that diversity. The Court's task is to calibrate pedagogy and margin, using dignity to persuade, yet also to mark a hard floor: punishment cannot reduce a person to a vehicle for society's moral instruction. In practice, the Court has articulated meaningful limits here, signalling that sanctions which extinguish hope, humiliate, or are manifestly disproportionate offend the dignity baseline.

At the same time, the Court resists dignity claims where it detects risks of political or ideological instrumentalisation, particularly in freedom-of-expression cases under Article 10. In *Eon v. France* (App. no. 26118/10), an applicant fined for insulting the President by displaying a placard reading "Casse-toi, pov'con" was found to have suffered a violation of Article 10; appeals to "the dignity of the office" could not justify curbing political satire. Similarly, in *Rujak v. Croatia* (App. no. 57942/10), a soldier convicted and imprisoned for "insulting the dignity of the Republic of Croatia" through offensive remarks prevailed before the ECtHR, which found a violation of Article 10. These cases underscore a crucial limit: the state cannot invoke "its dignity" to shield itself from criticism or to criminalise offence to institutional honour.

5. CRITICISM AND LIMITATIONS

While the principle of human dignity enjoys a prominent and often foundational status within European constitutional and human rights frameworks, it has not escaped scholarly and judicial criticism. One of the principal critiques levelled against the concept is its vagueness and indeterminacy.⁴⁴ As a legal standard, dignity is often considered too broad and open-textured to offer clear normative guidance or to meet the requirement of legal certainty, a cornerstone of the rule of law. In its most basic form, dignity reflects an intrinsic value attached to every human being, yet the absence of a universally accepted definition, whether philosophical, ethical, or legal, has led some commentators to describe dignity as an "empty vessel", capable of being filled with any content a court or legislator may find appropriate in a given context.⁴⁵

This difficulty is compounded by the cultural embeddedness of dignity. As shown in the diversity of legal traditions across Europe, the concept is understood differently: in Western European systems it is often linked to individual rights and secular liberalism, while in post-socialist systems it frequently carries a collective dimension, and in Islamic traditions, equal dignity does not necessarily translate into equal rights. This cultural divergence, when translated into law, contributes to divergent interpretations of dignity and further complicates its use as a predictable legal standard. The risk is not only doctrinal uncertainty but also legal fragmentation across jurisdictions.

⁴² Fikfak and Izvorova (n 37) 13.

⁴³ Jean-Paul Costa, 'Human Dignity in the Jurisprudence of the European Court of Human Rights' in C McCrudden (ed), *Understanding Human Dignity* (Oxford University Press 2013) 402.

⁴⁴ Jeremy Waldron, 'Is dignity the foundation of human rights?' (2012) New York University School of Law, Public Law and Legal Theory Research Paper Series, Working Paper No 12-73, 7.

⁴⁵ McCrudden (n 3) 657, 679.

Recent scholars have questioned whether the ECtHR uses the concept of human dignity in a consistent and legally meaningful way.⁴⁶ Fikfak and Izvorova argue that the ECtHR employs dignity more as a rhetorical and persuasive tool than as a norm with precise legal content.⁴⁷ Rather than clarifying the normative substance of dignity, the ECtHR often invokes the term strategically, appealing to shared moral intuitions while avoiding detailed doctrinal elaboration. This approach, while effective in generating legitimacy and consensus, contributes to conceptual ambiguity, leaving open how dignity functions as a legal standard in practice. As a result, critics argue that dignity at the ECtHR risks becoming a symbolic placeholder rather than a clearly operational principle.

From a legal standpoint, this criticism is particularly relevant in criminal law, where clarity, precision, and foreseeability of legal norms are paramount, especially when dealing with the use of state coercion, such as deprivation of liberty or the imposition of punishment.⁴⁸ Vague principles can raise concerns about judicial activism, where judges substitute abstract moral reasoning for clearly defined legal norms.

Despite these concerns, others argue that the open-ended nature of dignity is not a weakness, but rather a strength. Its inherent conceptual flexibility allows courts to adapt the principle to evolving societal norms, to respond to new technological and social challenges, and to fill normative gaps where written law is silent or underdeveloped.⁴⁹ In this view, dignity functions as a normative lodestar, orienting the interpretation of other rights and legal principles.

Indeed, this perspective has been embraced by the ECtHR and the CJEU, both of which have developed dignity into a guiding principle, even in the absence of explicit textual references in the ECHR. For example, while the ECHR does not contain a standalone article on human dignity, the ECtHR has frequently invoked dignity in interpreting Article 3 (prohibition of torture and inhuman or degrading treatment).

The ECtHR's jurisprudence thus reveals a growing tendency to anchor its human rights analysis in the concept of dignity, treating it as both a baseline of state obligations and a threshold for human rights violations. Through case-by-case elaboration, the ECtHR has gradually moved towards establishing a coherent doctrinal framework, even though dignity remains formally "unwritten" within the ECHR.

In parallel, the CJEU, which operates under the EU Charter of Fundamental Rights, where Article 1 expressly states that "human dignity is inviolable", has taken a more textual and principled stance. In cases such as *Omega Spielhallen* (C-36/02), the Court recognised human dignity as a legitimate ground for restricting freedoms under EU law, even when no explicit violation of a Charter right was established.

Nonetheless, even within the CJEU, the boundaries of what constitutes a violation of dignity and how it interacts with other rights are not always well-defined. Critics have noted that, despite the frequent invocations of dignity, the CJEU's reasoning

⁴⁶ Fikfak and Izvorova (n 37) 24.

⁴⁷ Fikfak and Izvorova analysed 268 judgements of the ECtHR in which the concept of human dignity was explicitly referenced. The period covered by their analysis spans from 1959 to 2020, providing a longitudinal view of how the ECtHR's use of human dignity has evolved over time. Rather than treating dignity as a fixed legal concept, they assess how judges use it to construct persuasive narratives, strengthen moral legitimacy, and build judicial consensus. Their approach combines legal analysis with insights from linguistics and rhetoric, aiming to uncover the communicative function of dignity in judicial reasoning.

⁴⁸ Merita Kettunen, *Legitimizing European Criminal Law* (Springer, 2020) 160.

⁴⁹ Erin Daly, 'Judicial Activity/Democratic Activity: The Democratising Effects of Dignity' in D Bedford, C Dupre, G Halmi, and P Kapotas (eds) *Human Dignity and Democracy in Europe: Synergies, Tensions and Crises* (Edward Elgar Publishing, 2022) 19.

sometimes lacks clarity regarding whether dignity serves as a right, a principle, or a value, and how conflicts between dignity and other rights should be resolved.⁵⁰

Therefore, although both the ECtHR and the CJEU are contributing to the gradual crystallisation of human dignity into a meaningful legal standard, important conceptual and doctrinal challenges remain. Dignity's normative appeal and moral force must be weighed against the need for legal predictability and institutional restraint, especially in the sensitive domain of criminal law, where the stakes for individual rights and state authority are particularly high.

Although concerns regarding the indeterminacy of the concept of dignity are well-founded, such critiques must be contextualised within a broader jurisprudential evolution in which European courts have progressively elaborated its contours, thereby contributing to the deepening and expansion of fundamental rights protections. Rather than rejecting dignity as too abstract, the emerging trend is towards constructive interpretation, allowing dignity to function as a normative bridge between unwritten values and enforceable legal guarantees.

6. CONCLUSIONS

The link between dignity and the legitimacy of criminal justice underscores the foundational role dignity plays in ensuring fairness and trust in legal proceedings. When the dignity of any participant is compromised, the integrity of the entire process is called into question. Conversely, safeguarding dignity throughout criminal proceedings reinforces the perceived legitimacy of legal institutions and strengthens public confidence in justice.

In the jurisprudence of both the ECtHR and the CJEU, dignity emerges as an unwritten but authoritative norm. Although not always explicitly codified, it derives normative force from shared constitutional traditions, the interpretive frameworks of international treaties, and the general principles of EU and human rights law. Despite ongoing debates regarding its precise legal status, whether it constitutes a general principle of law, a directly enforceable subjective right, or an interpretative standard, dignity plays a pivotal role in shaping judicial reasoning and the boundaries of state penal authority.

The challenge of balancing the expanding demands of public safety, including the preventive dimensions of criminal law and the phenomenon of overcriminalisation, with the imperative to respect dignity is increasingly complex. This tension is exacerbated by rapid technological developments, including mass surveillance, algorithmic decision-making, and the digitalisation of evidence, all of which test the limits of dignity-based protection in criminal procedure. As risks in the 21st century multiply, the role of dignity as a counterbalance becomes even more essential.

National legal systems are under growing pressure to ensure that their criminal laws and procedures align with the evolving standards of dignity articulated by European courts. This alignment requires not only formal compliance with international rulings but also a shift in legal culture, whereby dignity becomes embedded as a core evaluative criterion for assessing the legitimacy and proportionality of state action. European courts frequently invoke dignity to reinterpret ambiguous legal norms or to strike down punitive measures that are excessive, discriminatory, or arbitrary.

⁵⁰ Dietmar von der Pfordten, 'Dignity, Fundamental Rights and the CJEU: Between value, principle, and right' in S Vogenauer and S Weatherill (eds), *General Principle of EU Law and the Charter of Fundamental Rights* (Oxford University Press 2020) 87.

More broadly, the principle of dignity serves as a constitutional compass, guiding criminal law towards outcomes that are not only legally sound but also ethically and culturally justified. Its influence transcends formal sources of law, operating as a normative threshold below which no legal treatment of individuals should fall. As European criminal law becomes increasingly integrated, particularly through mechanisms of mutual recognition and cross-border cooperation, the importance of dignity as a unifying standard will continue to grow.

Respect for dignity constitutes both a substantive right and a procedural safeguard within European criminal law. Considering contemporary challenges, ranging from transnational crime to migration control and digital surveillance, the continued elaboration of dignity is essential. However, the concept must not remain an empty vessel into which varying meanings can be arbitrarily poured. Rather, it requires further structuring in both the substantive and procedural dimensions of law to avoid misuse and to maintain its integrity as a legal principle.

The principle of respect for dignity must be upheld as a guiding norm in all exercises of criminal justice. Future legal reforms, judicial interpretations, and institutional practices should remain committed to ensuring that this principle retains its central role in safeguarding the humanity, autonomy, and legal integrity of all individuals subject to the coercive power of the state.

