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HUMAN DIGNITY IN THE CRIMINAL PROCEEDINGS – INTERPRETATION OF THE EUROPEAN COURT OF HUMAN RIGHTS

After World War II the human dignity entered in the field of human rights and was included in international human rights instruments, as well as in the national Constitutions. The paper examines notion of human dignity in criminal law and in criminal procedure in particular. The focus is on the analysis of some issues that may arise in situations such as detention, statement obtain through coercion, lifetime imprisonment and how concept of human dignity influenced regulation of these issues. The author elaborates practice of the European Court of Human Rights and how interpretation of dignity evolved over time in these specific group of cases. Jurisprudence of Serbian Constitutional Court as well as courts of general jurisdiction has to be developed and harmonized in the area of interpretation of human dignity, so the caselaw of the European Court of Human Rights should be used as guideline in this regard.

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1. Human dignity in the criminal justice

The rule of law requires protection of human rights, including human dignity. The European Commission for Democracy through Law explained in a research report that the underlying standards of the rule of law entailed among other elements, respect for human rights.¹ The rule of law standards prohibits any form of humiliation of the person, even if he has committed illicit acts.

Human dignity entered the field of human rights as a response to the atrocities committed during World War II. Human dignity was included in the United Nations Charter, the Universal Declaration of Human Rights, but only since 2002 with adoption of Addition Protocol 13 the European Convention on Human Rights included human dignity in its wording, but not as a separate human right (Heselhaus, Hemsly, 2018: 2).

International protection of human rights increased significantly over the last century, due to acknowledgement that individuals must be protected certain attacks against their person. The Universal Declaration on Human Rights had key role in popularizing the use of human dignity in the human rights dialogue (McCrudden, 2008: 655). In the context of the criminal justice safeguards are protection against abuses of power which affect the life, liberty and physical integrity of individuals (Bassiuoni, 1993: 236).

The international treaties influenced movement of incorporating dignity into national constitutions (Mc Cruden, 664). However, there is no consensus on the approach. While some countries include a separate human right to dignity in their constitutions, other do not (Heselhaus, Hemsly, 9). The Constitution of Serbia refers to the human dignity in general and more specific context (Frenata, 2008: 3). According to article 19 of the Constitution whole Serbian legal system must be interpreted with the purpose of preserving human dignity. Definition of human dignity in Serbian Constitution is in line with European trends and it is very similar to the wording of EU Charter on Fundamental Rights (Etinski, 2015: 20).

In relation to the area of criminal law, article 28 of the Constitution calls for human treatment and respect of the dignity of persons deprived of liberty. The same article forbids violence and extorting of statement as ways of violation of human dignity. The guarantees of human dignity of persons deprived of liberty, are advanced in the Criminal

¹ European Commission for Democracy through Law (Venice Commission), Report on the Rule of Law, 4 April 2011, 512/2009, CDL-AD(2011)003rev.

Procedural Code by defining that a search of an individuals should be conducted with the respect of their dignity (article 157) and forbidding insults to the persons and the dignity of detainees (article 217). In addition, the guarantees are elaborated further in the Law on Execution of Criminal Sanctions orders respect of the dignity of the persons against whom the sanctions are executed (article 6). The respect of dignity includes specifically prohibition of torture, inhuman or degrading treatment or punishment, abuse or experimentation. The coercion against the person is punished if it is disproportion to the purpose of the sanction. Moreover, the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles protects the dignity of juveniles against whom the criminal sanctions are executed (article 89). It is particularly emphasized that the treatment of the juveniles should contribute to their proper development and re-socialization (Stevanović, Vujičić, 2019: 263).

Principle of human dignity in criminal law can relate to offenders but also to the victims and protection of their rights. Principle of human dignity of offenders can be expressed in several forms such as prohibition of torture and all inhuman or degrading punishment or treatment, which includes sentencing policy, procedural rights like right to counsel and the right to be presumed innocent, and resocialization, especially in the case of imprisonment (Cuesta, 2011: 459). The article is focused on procedural rights and sentencing policy through analyzing the jurisprudence of the European Court of Human Rights and systematic review of the different approaches used by the Court.

2. Relevance of human dignity for offender's procedural rights

International human rights instruments² provide for a number of fundamental human rights, including human dignity that are interrelated to the criminal process. These instruments set limitation to the state actions within the prosecution, trial, conviction and sanctioning of offenders. One of these limitations is set in the article 10 of the International Covenant on Civil and Political Rights states: "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Convention on the Right of Child incorporates protection of child deprived of liberty in article 37, including the right to legal assistance, fair trial, but also treatment with dignity and respect (Tilovska-Kechedji, Rakitovan, 2019: 131).

² Specifically, the International Covenant on Civil and Political Rights, European Convention on Human rights and Fundamental Freedoms, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, European Convention for the prevention of Torture and Inhuman or Degrading Treatment or Punishments.

Additional limitations are defined in the European Convention of Human Rights and caselaw of the European Court of Human Rights, especially in relation to article 3 of the Convention on prohibition of torture, inhuman or degrading punishment and treatment. The Court assessed cases related to the handcuffing the suspects, length of hearing or keeping prisoners in a metal cage during hearing and its compliance with article 3 of the Convention.

According to the Recommendation no. R. (87) 3 of 12 February 1987 it is forbidden to use handcuff and chains. The handcuffs may only be used during a transfer to avoid escape or for the medical reasons, but only based on guidance of the physician. However, the European Court of Human Rights in case *Rupa v. Romania (no. 1)*³ decided that even during the transfer these measures could be qualified as inhuman treatment if are applied for a long period of time, accompanied by humiliating situations and lack of appropriate medical attention in view of the vulnerable psychological state of the detainee.⁴

Another aspect of respecting human dignity during criminal proceedings is related to the hearings of person and duration of hearing. The Court has established in its caselaw that the cumulative use of certain interrogation techniques in a longer time may cause physical and psychological suffering of the person, which constitute a practice of inhuman and degrading treatment and represent violation of article 3 of the Convention.⁵

The Court interpreted the violations of human dignity as assaults on the collective human conscience in the case *Svinarenko and Slyadnev v. Russia*,⁶ where the Court found that the practice of keeping remand prisoners in a metal cage during court hearings presents degrading treatment (Mavronicola, 2020: 119). The Court found that “holding person in a metal cage during a trial constitutes itself – having regard to its objectively degrading nature which is incompatible with the standards of civilized behavior that are the hallmark of a democratic society – an affront to human dignity in breach of Article 3” (para 138).

Significant number of cases and the jurisprudence of the European Court of Human Rights related to the treatment in detention, statement obtain through coercion and right

³ Application no. 5847/00, judgment of 16 December 2008.

⁴ See: case *Pop Blaga v. Romania*, application no. 37379/02, judgment of 10 April 2012; case *Costiniu v. Romania*, application no. 22016/10, judgement of 19 February 2013.

⁵ Case *Ireland v. United Kingdom*, application no. 5310/71, judgment of 18 January 1978; para 246.

⁶ Application no. 32541/08 and 43441/08, judgement of 17 July 2014.

to a counsel. The Court's interpretation of the human dignity in these types of cases will be elaborated further.

2.1 Prohibition of torture and any inhuman or degrading punishment and treatment in detention and statement obtain through coercion

The principle of human dignity in criminal law is reflected through the prohibition of torture and of any form of inhuman or degrading punishment and treatment. This prohibition is incorporated in the key international instruments, including the Universal Declaration of Human Rights from 1948 (article 5), Covenant on Civil and Political Rights from 1966 (article 7), followed by the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishments from 1984. The UN Convention defines a basic international understanding of torture as any act by which severe pain or suffering that is intentionally cause on a person to obtain information, confession or punish him or third person (article 1). In addition to torture, cruel, inhuman or degrading punishment or treatment are prohibited by the UN Convention (article 16).

Interpretation of torture, inhuman and degrading punishment and treatment has been subject of the work of the European Court of Human Rights. Specifically, the application of the article 3 of the European Convention on Human Rights by the Court. Even though article 3 of the Convention does not explicitly contain the words human dignity, the Court in the case *Tyrer v. United Kingdom*⁷ confirmed that one of the main purposes of the article 3 is to protect person's dignity and physical integrity (para. 33).

Article 3 has been often described as an absolute right since article 3 makes no provision of lawful exceptions (Mavronicola, 2015: 724). Case law of the European Court of Human Right is pivotal for understanding human dignity and principles underpinning dignity emerging in the Court's analysis, including questions what is degrading or not, what is torture or not and whether a certain treatment offends human dignity.

The clearest examples of the Court's interpretation relate to treatment of people in detention. The European Court of Human Rights in the case *Selmouni v. France*⁸ emphasized that "in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3" (para 99). The Court

⁷ Application no. 5856/72, judgement of 25 April 1978.

⁸ Application no. 25803/94, judgment of 28 July 1999.

interpretes that unnecessary force applied to detainees violates the human dignity and prohibitions set in article 3 of the Convention. However, for the interpretation if there was violation of dignity the Court took into consideration many factors including “the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim, etc.” (para 100).

In *Bouyid v. Belgium* case,⁹ which also relates to the treatment of people in detention, the European Court of Human Rights placed human dignity as the essence of the Convention (para 89 of the judgement). For that reason, any conduct of law enforcement officers which diminishes human dignity constitutes a violation of Article 3 of the Convention “in particular to their use of physical forces against individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question” (para 101). The relevance of the Bouyid judgement is twofold, since the Grand Chamber adopted position with respect to violence in circumstance of power asymmetry and put the burden of disproving abuse on the more powerful party and affirming that the ‘minimum level of severity’ threshold is qualitative and attached to the wrongfulness of the treatment (Mavronicola, 2020: 123)

Relevant for violation of dignity and article 3 of the Convention are also cases related to the statements obtained through coercion or using inhuman and degrading treatment to collect evidence. In the case *Jalloh v. Germany*,¹⁰ the Court interpreted that the “the manner in which the impugned measure was carried out was liable to arouse in the applicant feeling of fear, anguish and inferiority that were capable of humiliating and debasing him” (para. 82). The Court confirmed the applicant claim that authorities interfered with his physical and mental integrity without his will.

To overcome challenges and provide guarantees to safeguard against the risk of obtaining statements through coercion countries took different measures, including the legal prohibition or criminalization of coercion by law enforcement, informing a suspect of his rights and right to remain silent, ensuring access to interpretation and translation and access to a counsel at the earliest stage (Brants, Franken, 2009: 36).

However, the special measures and conditions are developed and applied for detainees suspected of terrorism. The Netherlands has special detention regime for organized and dangerous crime. This duality of regimes and stringent security measures in detention

⁹ Application no. 23380/09, judgement of 28 September 2015.

¹⁰ Application no. 54810/00, judgement of 11 July 2006.

diminished human dignity and must have given rise to feelings of anguish and inferiority capable of humiliating and debasing in breach of article 3 of the Convention as the Court found in the case *Van der Ven v. the Netherlands* (para. 48 and 63)¹¹ and case *Lorsé v. the Netherlands* (para. 74).¹² In both cases the Court assessed whether such stringent measure may fall within the ambit of Article 3 regarding particular conditions, duration of measures, the objective pursued and its effects on the persons concerned.

2.2 Right to counsel

As it is already mentioned, failure to provide adequate access to legal counsel and denial of access to a lawyer can jeopardize whole criminal procedure, including violation of fair trial and other rights of suspect and accused persons, especially preventive measures against obtaining statement through coercion. This position is confirmed in the caselaw of the European Court of Human Rights. According to the Court's judgement in the case *Salduz v. Turkey*,¹³ in the situation when there suspect and accused did have access to a lawyer as from the first interrogation by the police, whole procedure could be unfair (para. 53-55).¹⁴ The Court highlighted importance of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that right of detainee to have access to legal advice is a fundamental guarantee against ill-treatment (para 39-40).

Denial of access to lawyer to suspect might happen because that he is not informed on his rights, especially right to remain silent during police interrogation and privilege against self-incrimination (Matić Bošković, 2020, 32). Psychological pressure of detention could lead to unjustified self-incrimination (Voorhout, 2017: 178). In addition, the lawyers should be understood as profession that should defend human dignity (Luban, 2005: 815).

In the case *Salduz v. Turkey*, European Court of Human Rights holds that there has been a violation of article 6 of Convention that guarantees right to a fair trial, since Salduz lack legal assistance of the lawyer while he was in police detention. During police detention,

¹¹ Application no. 50901/99, Judgement of 4 February 2003.

¹² Application no. 52750/99, Judgement of 4 February 2003

¹³ Application no. 3691/02, Judgement of 27 November 2008.

¹⁴ Similar position the European Court for Human Rights had in the following cases: *Ocalan v. Turkey*, application no. 46221/99, judgement of 12 May 2005; *Adamkiewicz v. Poland*, application no. 54729/00, judgment of 2 March.2010, para. 84; *Dayanan v. Turkey*, application no. 7377/03, judgement 13 October 2009, para. 32; *Panovits v. Cyprus* application no. 4268/04, judgment of 11 December 2008, para. 69–77.

Salduz signed statement and admitted his involvement in the criminal act. However, in front of public prosecutor Salduz claimed that he admitted crime since he was beaten and insulted in the police detention. According to the interpretation of the European Court of Human Rights that access to a lawyer should be provided from the first interrogation of a suspect by the police (para. 55). Even when there are compelling reasons that can justify restriction of access to a lawyer, such a restriction must not unduly limit rights of the accused (Sluiter, et al, 2013, pp. 244).

The case *Ponovits v. Cyprus*¹⁵ is relevant for better understanding how denial of right of suspect and accused to a legal counsel can influence on the rights of suspect and accused during criminal procedure and on the fairness of the whole process.¹⁶ In March 2009 the European Court of Human Rights concluded that lack of legal counsel during interrogation presents violation of right to fair trial that is guaranteed in the article 6 of the Convention (para 65). In addition, the Court stated that there was violation of article 6(1) since confession from police interrogation was used during the proceedings.

However, there is still certain number of questions that are partially interpreted or unclear. In its caselaw the European Court of Human Rights did not interpret consequences of violation of access to legal counsel. The Court systematically emphasized that national institutions should to annual the consequences of the violations by placing the persons in the same position he would have been in if the violation had not occurred. This position of the Court enables that common standards are interpreted differently in the practice.

Although the caselaw of the European Court of Human Rights is important for protection of human rights across the Council of Europe member states, there are practical problems that individual could have in addressing to the Court. Individual can submit application to the Court only when all national legal remedies are used. In addition, the Court is annually receiving significant number of applications which creates huge backlog of cases and protection of rights by the Court might happen after several years following violation. Abovementioned deterred people whose rights are violated to submit application to the Court (Cape, Namoradze, Smith, Spronken, 2010: 23-62).

¹⁵ Application no. 4268/04, judgment 11 March 2009. Suspect was 17 years old when police invited him and father to visit police station conserving the murder and robbery. After 30 minutes of questioning in the police station the accused confess guilt for both crimes. Police officers did not provide to accused legal representation, not even after he was arrested, nor during interrogation. Confession was made under the pressure, when police officer explained to accused that he should admit everything so he could go home.

¹⁶ Similar position European Court of Human Rights had in the case *Pishchalnikov v Russia*, application no. 7025/04, judgement of 24 September 2009.

The jurisprudence of the European Court of Human Rights leads to the progressive interpretation and acceptance of common standards in all member states. However, the case law of the Court promotes partial solutions and present *ad hoc* pressure on national authorities to reform practice and legislation. There are examples of the European Court of Human Rights caselaw influence on member states to amend procedures that the Court found as violation of fair trial. The judgment in the *Saldutz* case influenced on the interpretation of the supreme or constitutional courts in several members states (France, UK, the Netherlands and Belgium).¹⁷

These examples point to the limitation of the European Convention of Human Rights. *Saldutz* principles were interpreted differently in different countries, although courts and legislators were putting efforts to harmonize procedure with European Convention of Human Rights, that was achieved only partially (Kristen, 2011: 1-7).

3. Impact of human dignity on sentencing policy

The principle of human dignity in criminal law also influenced sentencing policy. This influence is especially elaborated in relation to death penalty and lifetime imprisonment.

The Council of Europe member states are bound by the European Convention on Human Rights, particularly article 2 and right to life and by Protocols No 6 from 1985 on the abolition of death penalty in time of peace and No 13 from 2003 that provides for its abolition in any circumstances. The Court jurisprudence also stand on position that death penalty could present inhuman and degrading punishment and treatment, especially in context of extradition to countries where death penalty still exists. In the case *Soering v. the United Kingdom*¹⁸ the Court found that extradition to the United States would represent violation of article 3, particular because of the death row phenomenon where people spent several years in extreme stress and psychological trauma awaiting to be executed.¹⁹ The method of execution of death penalty was also subject of the Court

¹⁷ Supreme Court of the UK in the case *Cadder* found that system of police detention in Scotland is not in line with *Saldutz* principles. In France the Constitutional Council in the decision from 30 July 2010 found that the regime *garde à vue*, when lawyers cannot participate in the interrogation of suspect, and statement can be used later against suspect, is not in line with the Constitution. Both decisions were followed by the amendments of legislation.

¹⁸ Application no. 14038/88, judgement of 7 July 1989.

¹⁹ See: case *Poltoratski v. Ukraine*, application no. 38812/97, *Kouznetsov v. Ukraine*, application no. 39042/97, *Nazarenko v. Ukraine*, application no. 39483/98, *Dankevitch v. Ukraine*, application no. 40679/98, *Aliev v. Ukraine*, application no. 41220/98 and *Khokhlitch v. Ukraine*, application no. 41707/98, judgments of 29 April 2003; *G.B. v. Bulgaria*, application no. 42346/98 and *Iorgov v. Bulgaria*, judgments of 11 March 2004.

assessment. The Court declared that exposure of a woman to a risk of being stoned to death give rise to a violation of article 3 of the Convention.²⁰

According to the article 10 of the International Covenant on Civil and Political Rights deprivation of liberty should be executed “with humanity and with respect for the inherent dignity of human person”. The aim of the imprisonment should be reformation and social rehabilitation of prisoners (article 10 of the Covenant). Despite the life imprisonment being a common punishment across the Council of Europe countries, limitations have been imposed on its application. These limitations have mainly been developed by the European Court on Human Rights jurisprudence on life sentencing and interpretation under article 3 of the Convention on prohibition of torture, inhuman and degrading treatment.

Problem of inhuman character of life imprisonment has been discussed for centuries (Van Zyl Smit, 1998: 6). The long-term imprisonment has negative psychological and social effects (Haney, 2006: 306), while loss of hope of possible release can make this sanction a torture (Murphy, 1979: 240). Lifetime imprisonment should be accompanied with the possibility of its revision at the end of serving a certain number of years (Verelst, 2003: 283). The European Court of Human Rights assessed compliance of lifetime imprisonment without parole with article 3 of the European Convention of Human Rights. The Council of Europe Resolution from 1976 stated that imprisonment of a person for life without any hope of release is not compatible with the principle of humanity.²¹

The European Court of Human Rights in the case *Kafkaris v. Cyprus*²² found that ‘imposition of an irreducible life sentence on an adult may raise an issue under article 3’, but the life sentence was not in itself prohibited or incompatible with article 3 (para. 97). The Court provided criteria for assessment of irreducible sentence. According to the Court interpretation the Article 3 will not be violated if the national law ‘affords the possibility of review of life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner’ (para. 98). The Court has found that even when the possibility of parole for prisoners serving a life sentence is limited the hope of release exists. For the purpose of article 3 it is enough that a life sentence is *de jure* and *de facto* reducible, even when in practice it may be served in full.

²⁰ Case *Jabari v. Turkey*, Application no. 40035/98, judgement of 11 October 2000.

²¹ Council of Europe, (1977) Resolution 76 (2), Treatment of Long-term Prisoners, Strasbourg.

²² Application no. 21096/04, judgment of 12 February 2008.

In the case *Vinter and Others v. UK*²³ the human dignity is placed at the centre of Article 3 of the Convention and recognition of the human dignity of all offenders no matter what they have done (Van Zyl Smit, Weatherby, Creighton, 2014: 65). The Court does not provide exhaustive definition of dignity but calls to a concrete application of it (para. 113). The Court found that the imposition of sentence of whole life imprisonment without the prospect of release through a suitable review mechanism constituted a breach of Article 3. According to the Court the lifetime prisoner is entitled to know what he must do to be considered for release and under what conditions. When domestic legislation does not include any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 arises at the moment of imposition of the sanction.²⁴

The Court indicated in para. 111 that legitimate penological grounds for detention will include punishment, deterrence, public protection and rehabilitation. Although many of these grounds will be present at the time when a life sentence is imposed, some of them might not be present after long sentence. Denial of the review of life imprisonment whatever progress prisoner made in rehabilitation establish retributive character of sanction (para. 112). The Court stated that the purely retributive life imprisonment present violation of article 3 since it prevents incentives towards rehabilitation. In the judgement the emphasis is put on rehabilitation that should be offered also to those serving life sentences. The success in rehabilitation is linked with the prospect of release (para. 114) and functioning as responsible members of the society again.

The Court applied in other cases considering different countries standards defined in the case *Vinter and Others v. UK*,²⁵ although there were discussions if the recent judgments of the Court are lowering established standards of prisoners' protection (Graham, 2018: 266). Furthermore, the Court assessed different mechanisms that exists across Europe from the perspective of applicants' prospect of release. The Court did not accept amnesty as a measure giving lifetime prisoners a prospect of release, as well as presidential pardon in the case *Matošaitis and Others v. Lithuania*.²⁶ Presidential pardon was not acceptable since there was no obligation to provide reasons for refusing a request for a pardon,

²³ Application nos. 66069/09, 130/10 and 3896/10, judgement of 9 July 2013.

²⁴ See: Council of Europe (2020) Guide on the caselaw of the European Convention on Human Rights – Prisoner's rights, pp. 55-59.

²⁵ See: case *Öcalan v. Turkey* (no. 2), application nos. 24069/03 and 3 others, judgement of 18 March 2014; *László Magyar v. Hungary*, application no. 73593/10, judgement of 20 May 2014; *Harachiev and Tolumov v. Bulgaria*, application nos. 15018/11 and 61199/12, judgement of 8 July 2014; *Čačko v. Slovakia*, application no. 49905/08, judgement of 22 July 2014; *Bodein v. France*, application no. 40014/10, judgement of 13 November 2014; *Murray v. the Netherlands*, application no. 10511/10, judgement of 26 April 2016.

²⁶ Application nos. 22662/13 and 7 others, judgement of 23 May 2017.

pardon decree lacks guidance how prisoners should reform in order to try to get presidential pardon, pardon decrees were not subject to judicial review and could be challenges by the prisoners directly, and the work of the relevant pardon commission was not transparent so it was not possible to inform how criteria for examination of pardon please are examined, and its recommendations were not binding on president (para. 170-171). Similar interpretation the Court gave in the case *Petukhov v. Ukraine (no. 2)*²⁷ since the presidential clemency, as the only procedure for early release, was not clearly formulated nor did it have adequate procedural guarantees against abuse (para. 177-180).

4. Conclusions

Application of principle of human dignity in the criminal justice prohibits torture and all inhuman or degrading punishment of treatment. This prohibition has effects on the procedural rights of the suspect and accused, trough introduction of preventive mechanisms and instruments in the criminal procedure legislation, but also cases significant impact in the field of sanctions. In the area criminal sanctions, the principle of human dignity has a consequence putting barriers against death penalty, life imprisonment and very long punishments, inhuman or degrading prison system. When it comes to the penitentiary system and execution of prison sanctions the human dignity puts in the focus maintaining of resocialization.

The jurisprudence of the European Court of Human Rights is significant tool for better understanding of human dignity effects and interpretation in the area of criminal justice. As we could see from analyzed caselaw, the European Court of Human Rights applies multilayer concept of human dignity. The Court is interpreting concept of human dignity on a case-by-case basis to ensure flexibility in each case, which is especially visible in the decisions concerning life imprisonment. The human dignity serves as an instrument for expansion of the scope of protection of other human rights in the interpretation of the European Court of Human Rights.

Interpretation and reasoning of the ECHR related to the human dignity could be used by Serbian judicial authorities, specifically the Constitutional Court, Supreme Court of Cassation, but also lower courts when they are deciding on protection of human dignity in criminal cases, especially those related to the ill and inhuman treatment. Since Serbian courts are putting efforts to harmonize jurisprudence, review of the European Court of

²⁷ Application no. 41216/13, judgement of 12 March 2019.

Human Rights practice is even more important.²⁸ This is in line with the statement of the former president of the European Court of Human Rights who emphasized that the Court is not only deciding specific cases, but in using dignity sends a signal to states on the importance of what is at stake (Costa, 2013: 402).

References

- Bassiouni, M. C., (1993) Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in International Constitutions. *Duke Journal of Comparative and International Law*, vol. 3, no. 2, pp. 235-293.
- Brants, C., Franken, S., (2009) The Protection of Fundamental Human Rights in the Criminal Process – general report. *Utrecht Law Review*, Vol. 5, No. 2, pp. 7-65.
- Cape, E., Namorandze, Z. Smith, R., Spronken, T. (2010) Effective Criminal Defence in Europe, Antwerp/Oxford/Portland: Intersentia
- Costa, J.P., (2013) Human Dignity in the Jurisprudence of the European Court of Human Rights. In: McCrudden, C. (ed.), *Understanding Human Dignity - Proceedings of the British Academy*, Vol. 192, pp. 393-402.
- Cuesta, J. L., (2011) The Principle of Humanity in Penal Law. *International Review of Penal Law*, Vol. 82, No. 3, pp. 457-476.
- Etinski, R. (2015) Zaštita ljudskog dostojanstva u pravu Srbije i u pravu Evropske unije. In *Odnos prava u region i prava Evropske unije*, Istočno Sarajevo, pp. 18-35.
- Franeta, D., (2018) Human Dignity in Serbia. In. Becchi, P., Mathis, K., (ed.) *Handbook of Human Dignity in Europe*, Springer, pp. 1-19.
- Graham, L., (2018) From Vinter to Hutchinson and Back Again? The Story of Life Imprisonment Cases at the European Court of Human Rights. *European Human Rights Law Review*, No. 3, pp. 258-267
- Heselhaus, S., Hemsley, R. (2018) Human Dignity and the European Convention of Human Rights, In. Becchi, P., Mathis, K., (ed.) *Handbook of Human Dignity in Europe*, Springer, pp. 1-24.
- Haney, C., (2006) *Reforming Punishment: Psychological Limits to the Pains of Imprisonment*. American Psychological Association, Washington DC
- Luban, D., (2005) Lawyers as Upholders of Human Dignity. *University of Illinois Law Review*, Vol. 2005, No. 3, pp. 815-846.
- Kristen, F., (2011) Special Issue on Changing Approaches to Authority and Power in Criminal Justice. *Utrecht Law Review*, Vol. 11, No. 3, pp. 1–7.
- Matić Bošković, M., (2020) Uređenje procesnih prava osumnjičenih i okrivljenih u pravnim tekovinama Evropske unije. *Strani pravni život*, Vol. 64, No. 1, pp. 29-43.

²⁸ According to Franeta the court practice in Serbia is neither coherent nor clear enough concerning the status and meaning of human dignity in Serbian courts. Same conclusion on Serbian Constitutional Court caselaw is presented by Simović.

- Mavronicola, N., (2015) Crime, Punishment and Article 3 ECHR: Puzzles and Prospects of Applying an Absolute Right in a Penal Context. *Human Rights Law Review*, Vol. 15, No. 4, pp. 721-743.
- Mavronicola, N. (2020), Bouyid v Belgium: The 'Minimal Level of Severity' and Human Dignities Role in Article 3 ECHR. *European Convention of Human Rights Law Review*, Vol 1, No. 1, pp. 105-124.
- Murphy, J., (1979) Retribution, Justice and Therapy. D. Reidel Publishing Company.
- McCrudden, C., (2008) Human Dignity and Judicial Interpretation of Human Rights. *European Journal of International Law*, vol. 19, no. 4, pp. 655-724.
- Simović, D., (2019) Dileme o domašaju prava na ljudsko dostojanstvo i praksa Ustavnog suda Srbije. *Arhiv za pravne i društvene nauke*, No. 1-2, pp. 11-29.
- Sluiter, G., Friman, H., Linton, S., Vasiliev, S., Zappala S. (ed.) (2013) International Criminal Procedure: Principles and Rules. Oxford: Oxford University Press.
- Stevanović, I., Vujičić, N., (2019) Adequate Training of Juveniles Deprived of Liberty: A Step Forward Successful Reintegration, In. Yearbook Human Rights Protection – Protection of the Rights of the Child, Provincial Protector of Citizens, Institute of Criminological and Sociological Research, pp. 255-283
- Tilovska-Kechedji, E., Rakitovan D., (2019) Will it Be or Will it Not? (US Position on Ratifying the CRC) In. Yearbook Human Rights Protection – Protection of the Rights of the Child, Provincial Protector of Citizens, Institute of Criminological and Sociological Research, pp. 129-143
- Voorhout, J. C., (2017) Ineffective Legal Assistance: Redress for the Accused in Dutch Criminal Procedure and Compliance with ECHR Case Law, Lieden/Boston: Brill Nijhoff.
- Van Zyl Smit, D., (1998) Life Imprisonment as the Ultimate Penalty in International Law: A Human Rights Perspective. *Criminal Law Forum*, Vol. 9, No. 1-2, pp. 5-54.
- Van Zyl Smit, D., Weatherby, P., Creighton, S., (2014) Whole Life Sentences and the Tide of European Human Rights Jurisprudence: What is to be Done? *Human Rights Law Review*, Vol. 14, pp. 59-84
- Verelst, S., (2003) Life Imprisonment and Human Rights in Belgium. *Human Rights Law Review*, Vol. 3, No. 2, 279-290.