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**CRIME VICTIMS AND THE RIGHT TO HUMAN DIGNITY
- CHALLENGES AND ATTITUDES IN SERBIA -**

From its very philosophical substance, through the religious, sociological and legal nature, the right to human dignity has passed the long way of developing its content and scope in its various meanings. Once proclaimed as the universal human rights value in 1948, the right to human dignity has been further elaborated through the number of universal and regional human rights instruments, with the different level of impact on the legislation and practices on the national level. In the context of criminal proceedings, initially, more focused on the procedural safeguards of accused and consequently of sentenced persons, the right to human dignity of crime victims slowly, but surely becomes the one of the main human rights values framing the content and scope of other crime victims' rights, rather than the stand-alone right. The paper is dedicated to the issue of protection of victims of crime and the necessity of standardization and a broader implementation of the right to human dignity of crime victims, through the analysis of the international and national normative framework and practice.

Keywords: *crime victims, human dignity, procedural safeguards, victims and media*

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1. A concept of human dignity

Human dignity, in contemporary discourse, is a generally accepted term which, in the broadest sense, means fundamental value of every individual or a basic principle that indicates the existence of freedom of individuals and basic human rights. The liberty of man and concept of basic human freedoms and rights are, indisputably, the basis (and in the function) of the protection of human dignity. However, although the term is used in all spheres of modern social life, defining the concept of human dignity and determining its content is not an easy task. On the contrary. Neither the legal definition of the concept of human dignity, nor the determination of the content of the concept in other scientific disciplines, provides a simple answer to the questions of what human dignity represents, what constitutes its content and how its protection is achieved. In the other words, human dignity is a very extensible concept subject to a wide variety of changes and applications; as well as law, it is easier to feel it, and it is incomparably harder to determine it (Mitrović, 2016: 25).

Difficulties in defining the concept of human dignity and determining its content stem from the fact that it represents the value of every human being. As pointed out in the literature, human dignity is an absolute intrinsic value that every human being possesses in the same way (Meyer-Ladewig, 2004: 143), while its significance stems from the fact that it is a vital element in defining the human being (Zajadlo, 1999: 41). If it forms the basis for defining a human being and is an indisputable intrinsic value of every human being, it can be stated that human dignity is innate, egalitarian, inalienable and indivisible. It can also be seen as a basic natural right of every human being acquired at birth. As something inherent to, and thus, inseparable from human beings, dignity is considered to be universal – all human beings are born equal in dignity, regardless of culture, regardless of time, regardless of level of development, physical or mental ability, or any other mutable human qualities (Piechowiak, 2015: 7).

Theories of human dignity have their origin in the antiquity. The idea of human dignity which was used to explain man's elevated position in the logos, was formulated by the Stoics of Greece in 128 B.C. It was transmitted as such in Roman society via the works of Cicero, the Roman jurist and philosopher (Steinmann, 2016: 29). Cicero believed that all human being were endowed with *dignitas*, and that therefore all mankind is worthy of respect for the sole fact of its existence. This attribute was universal because human beings possessed “superior minds” which gave them a capacity to think and be self-aware. Cicero articulation of dignity as an inherent quality was the minority view. More common view was that *dignitas* was an acquired trait, an indication of high social or political status.

Hence, Roman dignity was manifestation of personal authority which symbolized “majesty, greatness, decorum and moral qualities”. It was a characteristic typically ascribed for those in high office (Glensy, 2011: 74).

Dignity did not move from a feature of the privileged to as aspect intrinsic to everyone until the Renaissance. Picco dela Mirandolla de-coupled human dignity from social hierarchy and deemed that it was making’s free will and gift from God to all without regard to rank, that was to root of the inherent dignity of individual humans (Glensy, 2011: 75).

Many credit the philosopher Immanuel Kant with establishing contemporary understandings of dignity. Some argued that the ‘traditional’ philosophical paradigm of human dignity, an account stretching from Cicero to Kant, was that human dignity signifies the high rank and elevated position of the human being vis-à-vis the rest of nature (Sensen according to Zylberman, 2016: 203). Kant emphasized a person’s ability to engage in rational, autonomous, and self-directed thought and the capacity to make moral decisions and take moral actions. Together, these things highlighted the exceptional nature of humanity and the inherent dignity contained therein. Kant viewed dignity as an integral and central characteristic of what it means to be human, he also contended that dignity was without a price. This premise leads to Kant’s famous categorical imperative, which guides people to “act in such a way that you treat humanity, whether in your own person or in the person of any other, both in your person and in the person of each other individual, always at the same time as an end and never simply as a means” (Giannini, 2016: 47).

For Proudhon, the real content of justice and the principle of overall ethics is expressed in human dignity. In relation to one's closer, this feeling is generalized and rises to a sense of human dignity in general, which inevitably awakens in the mental being with the help of every other person, be it a friend or an enemy. It is selfless and exerts coercion that rules over all other feelings, which distinguishes it from love and all other inclinations. Everyone is given the right to demand from everyone else respect for human dignity in his person, and the duty is to compel everyone to recognize this dignity in others. (Djurdjić, Trajković, 2010: 36).

The influence of Kant's conceptions is evident in today's philosophical discussions, although human dignity is “the premier value underlying the last two centuries of moral and political thought” (Bedau, 1992: 145). Parent defines dignity as “negative moral right not to be regarded or treated with unjust personal disparagement and not to be subject to

or victimized by unjust attitudes or acts of contempt” (Parent, 1992: 751). Under this variant of dignity, all individuals should be treated equally under the law and be free from “arbitrary government action that demeans, humiliates or degrades” (Goldman according to Giannini, 2016: 48).

Also, it is necessary to distinguish human dignity, which is derived from human nature, from the social understanding of dignity, and both from legal dignity, which can be observed through natural law or positive law. It is also possible to distinguish Christian from Islamic or Confucian human dignity, humanistic-enlightenment from Marxist, systemic-theoretical or behavioral human dignity (Mitrović, 2016: 26). Human dignity in relation to the fact that it can be seen as unwritten basic principle of human rights law or as special human right of every human, can also be marked as “unspoken interpretive value (as a background interpretive norm or evolving beyond its unspoken role) or spoken and procreative power” (Giannini, 2016: 46-98).

Human dignity from the point of view of the victims of a crime is (still) an unspoken interpretive value, in most comparable criminal justice systems. It is indisputable, however, that the dignity of the victim must become a basic principle and a fundamental right of the victims of a crime.¹ All other rights of victims of crime must derive from the victim's right to human dignity.

2. International standards on the victims’ right to dignity

If look at the main international instruments in the field of victims’ rights, it is obvious that the right to dignity has been comprehensively recognized, despite the fact that its scope and content still have not been precisely determined. However, it is obvious that there is a still lack of coherence in terms of the way on how this right is defined in various instruments (fluidly as a value/principle, as an element of some other right of victims or as a stand-alone right).

¹ See more in: Kambovski, V. (2018) Natural Rights, Legitimacy of Laws and Supranational Basis of Unlawfulness, In: *Yearbook. No. 1 Human rights protection “From unlawfulness to legality”*, (pp. 31-49). Novi Sad: Provincial Protector of Citizens – Ombudsman, ISBN 978-86-89417-08-1 (PZG) ISBN 978-86-80756-14-1 (IKSI)

2.1 Universal human rights instruments

The main step in the promotion of the right to human dignity was the adoption of the **Universal Declaration of Human Rights**² which established this right as the one of the main, universal human rights values.³ Article 1⁴ of the Declaration brings the revolutionary provision saying that “all human beings are born free and equal in dignity and rights”, tracing the path for all the human instruments adopted so far to uphold and upgrade on this.

International Covenant on Civil and Political Rights,⁵ recalls the concept of human dignity as integrated in the Universal Declaration and declares that the rights guaranteed by the Declaration rights derive from the inherent dignity of the human person. In addition to this general concept, the right to dignity is also recognized as a frame of the treatment of persons deprived of liberty (art. 10).⁶ **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**,⁷ also recalls that the rights guaranteed by the Declaration rights derive from the inherent dignity of the human person.

Probably the most comprehensive approach in terms of the right to human dignity as an universal value, but also as the framework of victims’ right, could be found in the

² Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A), available at: <https://www.un.org/en/universal-declaration-human-rights/index.html>, last accessed at September 5th 2020.

³ Preamble of the Declaration, among others says: ...” Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, ...”...”Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,...”

⁴ Article 22 “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”. Article 23, par. 3. provides for a favorable remuneration for all who works to ensure for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

⁵ International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49

⁶ “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly Resolution 39/46 of 10 December 1984, entry into force 26 June 1987.

Convention on the Rights of the Child (hereinafter: CRC).⁸ The CRC defines the human dignity as the core value in its Preamble⁹, and further elaborates it through the ensuring proper life conditions for disabled children (art. 23); administration of school discipline in manner consistent with the child's human dignity (art. 28, par. 2); treatment of the children deprived of liberty (art. 37(c)) and accused of, or recognized as having infringed the penal law (art. 40)¹⁰ However, of the greatest importance for the scope of our analysis is the provision of the art. 39 which obliges the States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. "Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child." From such a formulation, it is obvious that the CRC sees the right to dignity of a child victim as the wished and expected outcome of the adequate treatment. Despite the lack of the clear provision which inherently provides for the treatment of a child victim in a manner which foster preservation of his/her dignity, it is obvious that exactly this was the intention.

Adopted almost four decades since the Universal Declaration had proclaimed the right to human dignity as the universal value, **United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (1985)¹¹ introduced the right to dignity as an essential procedural right of crime victims, providing that under the heading access to justice and fair treatment, victims should be treated with compassion and respect for their dignity. "In fact, the first and most fundamental need for victims is recognition. Human dignity is a fundamental right. Treating victims with compassion and with respect for their dignity is a fundamental aspect of providing victims with justice. For many

⁸ Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

⁹ "Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom..."

¹⁰ "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

¹¹ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), Adopted by General Assembly resolution 40/34 of 29 November 1985.

victims, it is important that they are recognized as a victim, and that their suffering as the result of a wrongful act against them is acknowledged.” Declaration also recognizes an importance of the right of victim to “be treated with dignity and respect in all interactions with the police or investigating authorities, legal professionals, judicial staff and others involved in the judicial process: procedures and communications should be ‘victim sensitive’ and those interacting with victims should seek to act with empathy and understanding for their individual situation.” However, the Declaration does not limit the validity of this right exclusively to these situations. Contrary, it provides that “the same applies in terms of the way in which victim support or social services should treat victims”, listing some examples of disrespectful treatment, e.g. setting a trial date without consulting the victim first so that it may be impossible for the victim to attend; not providing the victim with privacy during an examination; or questioning the victim in an inappropriate or blaming way. Respectful treatment is particularly important for vulnerable victims, including for: children; victims of sexual and gender-based violence; victims of domestic violence; the elderly; and disabled persons, for example. It is equally important that indirect victims, including family members, are treated with respect.

In the same spirit, but a specially adjusted to the needs of child victims is the content of the **United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime**¹² and the particular attention should be paid to its statement that “every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected”(par. 8(a)) as well as on the Section V, which rules the right to be treated with dignity and compassion and provides that: “Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. Every child should be treated as an individual with his or her individual needs, wishes and feelings.” Defined like this the right to dignity should be understood like a manner of treating child victims.

The right to dignity has been incorporated also in some of new human rights instruments of a new generation, like the **International Convention for the Protection of all Persons from Enforced Disappearance (hereinafter: ICPPED)**.¹³ The Convention

¹² United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20, 36th plenary meeting 22 July 2005.

¹³ International Convention for the Protection of All Persons from Enforced Disappearance, Resolution 61/177 adopted by the General Assembly on 20 December 2006, [on the report of the Third Committee (A/61/448 and Corr.2)]

addresses the right to dignity in the several provisions, including those dealing with the collection, processing, use and storage of personal information, including medical and genetic data, which “shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual” (art. 19, par. 2), but also in the art. 24, par. 5(c) where the right to dignity is recognized as a form of reparation (modality of satisfaction) other than compensation for material and moral damages suffered from enforced disappearances, together with restitution, rehabilitation and guarantees of non-repetition.

In addition to the previously elaborated instruments, the right to dignity is incorporated also in the so-called UN soft law. **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**¹⁴ addresses it comprehensively, starting from the Preamble which reaffirms the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity. It also recalls the **Rome Statute of the International Criminal Court** which requires the establishment of “principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation”, and the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court “to protect the safety, physical and psychological well-being, dignity and privacy of victims” and to permit the participation of victims at all “stages of the proceedings determined to be appropriate by the Court”

The Basic Principles also describes the gross violations of international human rights law and serious violations of international humanitarian as by their very grave nature, an affront to human dignity. In par.10 of this document, the dignity of victims is proclaimed as a general principle/value which frames the whole treatment of victims, prescribing that “victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. In accordance to this general approach, the Basic Principles includes the same approach to the restoration

¹⁴ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution 60/147, adopted by the General Assembly on 16 December 2005 [on the report of the Third Committee (A/60/509/Add.1)]

of dignity as modality of satisfaction, which fits to the understanding of dignity as a general approach. (par. 22(d)) The outcome of the whole procedure should be restoration of dignity, but also the manner in which this procedure is conducted.

2.2 European human rights instruments

Contrary to the UN instruments, a bit surprisingly, the European Convention on Human Rights (hereinafter: ECHR)¹⁵ does not recognize the right to dignity neither as a universal value, neither as a stand-alone right. The only place where the human dignity is mentioned is the Protocol No. 13¹⁶, which provides 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.”

Contrary to this, the **Charter of Fundamental Rights of the European Union**¹⁷ in its Preamble emphasizes that the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity.¹⁸

Member States shall ensure that victims are recognized and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings.¹⁹ Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognized and treated in a respectful, sensitive and professional manner without discrimination of any kind.²⁰

There is no doubt that the adoption of the **Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council**

¹⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of the SaM – International Treaties, no. 9/03).

¹⁶ 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 Vilnius, 3.V.2002.

¹⁷ Charter of Fundamental Rights of the European Union 2012/C 326/02

¹⁸ In the Article 1 of the Charter, human dignity is defined as inviolable and it must be respected and protected. In addition to this general principles, in the art. 25 the human dignity is recognized as the requirement in protecting elderly rights, while in the art. 31 it has been recognized as right of workers.

¹⁹ DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, (art.1)

²⁰ Par. 9.

Framework Decision 2001/220/JHA, was a kind of turning point in the introduction of the brand new EU concept of victims' rights. This Directive respects fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union. In particular, it seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of nondiscrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial. (par. 66)

In addition to this general approach, according to the Directive, "persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity." (par. 38)

The Directive also recognizes an importance of protecting the right to dignity when implementing victims protection measures. "Measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimization, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders. (par. 58) Without prejudice to the rights of the defense, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimization, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members." (art. 18)

In addition to the general framework introduced by the Directive (2012)029EU, the right to dignity of victims is also recognized in some instruments dedicated to ensuring special

protection to specially vulnerable categories of victims, like victims of human trafficking. **Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims**,²¹ similarly to the Directive (2012)029EU, this Directive respects fundamental rights and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of slavery, forced labor and trafficking in human beings, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, the protection of personal data, the right to an effective remedy and to a fair trial and the principles of the legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.

It is important to mention that this document recognizes a serious violation of human dignity and physical integrity as a result of trafficking in human beings for the purpose of the removal of organs, as well as, for instance, other behavior such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings. (par. 11)

As earlier mentioned when analyzed the UN CRC, it seems that in the field of the child friendly justice, including child victims, the right to dignity has been recognized and developed more progressively than in others fields. **Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice** (hereinafter: Guidelines).²² Providing that “a child-friendly justice system must not “walk” in front of children, it must not leave them behind” the Guidelines emphasizes that it should treats children with dignity, respect, care and fairness. In attempt to define a child friendly justice, it refers to “justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and

²¹ DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

²² Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

to integrity and dignity.” The right to dignity is also recognize as a criteria to be taken into account in assessing the best interests of the involved or affected children, where their views and opinions should be given due weight and all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times. This provision should be looked carefully, since it recognizes the right to dignity as a stand-alone right, not just as a framework of exercising other rights, especially in the context of the Section C of the Guidelines, which clearly define the dignity, that is kind of curiosity, having in mind all the earlier elaborated international standards that mostly address it superficially (if tackles it at all). Therefore, the Guidelines provides that dignity means that: “1. Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come into contact with judicial or non-judicial proceedings or other interventions, and regardless of their legal status and capacity in any procedure or case. Children shall not be subjected to torture or inhuman or degrading treatment or punishment.” In the Explanatory memorandum following the Guidelines (par.39) it is underlined that “respecting dignity is a basic human rights requirement”. Defined like this, the right to dignity represent the procedural framework and manner of dealing with children in justice system, including child victims. Obviously, it might be a bit controversial in relation to the above mention recognition of the right to dignity as stand-alone right, but not necessary. Even if we treat it like a stand-alone right, this right should mean and imply, the manner on how the child (including child victim) is treated in justice system.²³ Therefore, it is a kind of hybrid human right.

3. ECtHR jurisprudence in relation to the victims’ right to dignity

As earlier mentioned, human dignity is not a stand-alone right protected by the European Convention on Human Rights, but it is, as a special value or a guiding principle, indicated in numerous judgments of the European Court of Human Rights. Before this Court, human dignity is patronized through the protection of the right to life, the prohibition of torture, the prohibition of slavery and forced labor, the right to liberty and security, the right to a fair trial, the right to respect for private and family life, the freedom of thought, conscience and religion, right to an effective remedy, prohibition of discrimination and other rights proclaimed by the European Convention of Human Rights. Although in a

²³ Police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties. (par. 27)

large number of cases the basic human rights of defendants, accused, convicted persons and persons serving sentences are protected, having in mind the position and rights of suspects in relation to victims of crimes in modern criminal proceedings, we will try to summarize the case law of the European Court of Human Rights through cases in which, in addition to the protection of a particular right, the protection of the human dignity of victims of crime is emphasized.

For example, in the case of *Volodina v. Russia*,²⁴ in which the applicant alleged that the Russian authorities had failed in their duty to prevent, investigate and prosecute acts of domestic violence which she had suffered at the hands of her former partner and that they had also failed to put in place a legal framework to combat gender-based discrimination against women. The applicant complained that the domestic authorities had failed to protect her from treatment - consisting of repeated acts of domestic violence - proscribed by Article 3 of the Convention and to hold the perpetrator accountable. She also alleged a breach of Article 13 of the Convention, taken together with Article 3, on account of deficiencies in the domestic legal framework and of the absence of legal provisions addressing domestic violence, such as restraining orders.

Case fact: Valeriya Volodina, alleged that she had suffered a pattern of domestic violence perpetrated by her former partner, Mr. S. Over the course of three years, S. allegedly assaulted, kidnapped, stalked, threatened, stole from, and intimidated the applicant. One particularly hard punch, to her stomach, led to the termination of her pregnancy. S. also allegedly published the applicant's private photographs online and put a secret GPS tracker in her purse. The applicant's police complaints never led to a conviction or any protective measures; in 2018, she legally changed her identity in order to impede S. from finding her. In para 73. of the Judgement, Court, inter alia, stated "Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. An assessment of whether this minimum has been attained depends on many factors, including the nature and context of the treatment, its duration, and its physical and mental effects, but also the sex of the victim and the relationship between the victim and the author of the treatment. Even in the absence of actual bodily harm or intense physical or mental suffering, treatment which humiliates or debases an individual, showing a lack of respect for or diminishing **his or her human dignity**, or which arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, may be characterized as degrading and also fall within the prohibition set forth in Article

²⁴ Case of *Volodina v. Russia*, Application no. 41261/17, Judgement, 9 July 2019.

3. It should also be pointed out that it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others”. In para 75. Court repeated that “...publication of her private photographs further undermined her **dignity**, conveying a message of humiliation and disrespect”. Finally, Court finds that that there has been a violation of Article 3 of the Convention; that there is no need to examine the complaint under Article 13 of the Convention and there has been a violation of Article 14 of the Convention, taken in conjunction with Article 3.

In the case of *Hajdukova v. Slovakia*,²⁵ the applicant alleged that the domestic authorities had violated her rights under Articles 5 and 8 of the Convention by failing to comply with their statutory obligation to order that her former husband be detained in an institution for psychiatric treatment, following his criminal conviction for having abused and threatened her.

Case facts: On 21 August 2001 the applicant's (now former) husband, A., attacked her both verbally and physically while they were in a public place. The applicant suffered a minor injury and feared for her life and safety. This led her and her children to move out of the family home and into the premises of a non-governmental organization in Košice. On 27 and 28 August 2001 A. repeatedly threatened the applicant, inter alia, to kill her and several other persons. Criminal proceedings were brought against him and he was remanded in custody. On 29 November 2001 a public prosecutor indicted A. before the Košice I District Court. The indictment stated that the accused had been convicted four times in the past. Two of the offences had been committed in the last ten years and involved breaches of court or administrative orders. In the course of the criminal proceedings, experts established that the accused suffered from a serious personality disorder. His treatment as an inpatient in a psychiatric hospital was recommended. On 7 January 2002 the District Court convicted A. The court decided not to impose a prison sentence on him and held that he should undergo psychiatric treatment. At the same time, the court released him from detention on remand. A. was then transported to a hospital in Košice. That hospital did not carry out the treatment which A. required, nor did the District Court order it to carry out such treatment. A. was released from the hospital on 14 January 2002. After his release, A. verbally threatened the applicant and her lawyer and they filed criminal complaints against him. They also informed the District Court (which had convicted him on 7 January 2002) about his behavior and of the new criminal complaints they had filed. On 21 January 2002 A. visited the applicant's lawyer again and

²⁵ Case of *Hajdukova v. Slovakia*, Application no. 2660/03, Judgement, 30 November 2010.

threatened both her and her employee. On the same day he was arrested by the police and accused of a criminal offence. The District Court arranged for psychiatric treatment of A. in accordance with its decision of 7 January 2002. He was consequently transported to a hospital in Plešivec. On 7 March 2002 the applicant filed a complaint with the Constitutional Court. She alleged a violation of Articles 5 and 6 of the Convention and of Articles 16 (§ 1) and 19 (§ 2) of the Slovak Constitution, in that the District Court had failed to ensure that her husband be placed in a hospital for the purpose of psychiatric treatment immediately after his conviction on 7 January 2002. In its judgement, in para 22. cited Slovakian Civil Code which in article 11 predicts that “every natural person shall have the right to protection of his or her personal integrity, in particular his or her life and health, civil and **human dignity**, privacy, reputation and expressions of a personal nature”, and in para 39. referring to the earlier judgments of the Slovak courts observes that “...its inadmissibility decision in the case (...) on which the Government seek to similarly concerned circumstances in which a clear affront to the **applicant's dignity** or social standing could be identified, as the complaint in issue centered on Article 6 § 2 of the Convention and the applicant's right to be presumed innocent until proved guilty”. In this case, Court held that there has been a violation of Article 8 of the Convention.

In the case of *Valiuliene v. Lithuania*,²⁶ applicant alleged that the State had failed to protect her from acts of domestic violence. She also complained that the criminal proceedings she had instituted had been futile, given that the perpetrator of the crimes had been left unpunished. The applicant stated that between 3 January and 4 February 2001, she had been beaten up on five occasions by her live-in partner, J.H.L., a Belgian citizen. She submitted that she had been strangled, pulled by the hair, hit in the face and kicked in the back and in other parts of her body.

The applicant's injuries were documented by forensic expert examinations. Each time the experts concluded that the bodily injuries sustained were minor and had not caused any short-term health problems. She requested that the court open a criminal case against J.H.L. and that he be charged and punished under the above-mentioned provision of the Code. The applicant provided a list containing the names and addresses of five neighbors she wanted to call to the court as witnesses. 2005 the Panevėžys City District Court upheld the prosecutor's decision, dismissing the applicant's appeal. The court noted that, under Article 409 of the new Code of Criminal Procedure, a prosecutor had a right, but not an obligation, to initiate a pre-trial investigation. There was no information in the case file

²⁶ Case of *Valiuliene v. Lithuania*, Application no. 33234/07, Judgement, 26 March 2013.

to indicate that the case was of public interest or that the victim could not protect her own rights by means of a private prosecution. In this case, Court, by six votes to one finds that there has been a violation of Article 3 of the Convention and that there is no need to examine the complaint under Article 8 of the Convention. In his concurring opinion, judge Pinto de Albuquerque, inter alia, stated that “European Convention on Human Rights can only be achieved with a gender-sensitive interpretation and application of its provisions which takes in account the factual inequalities between women and men and the way they impact on women’s lives. In that light, it is self-evident that the very act of domestic violence has an inherent humiliating and debasing character for the victim, which is exactly what the offender aims at. Physical pain is but one of the intended effects. A kick, a slap or a spit is also aimed at belittling the **dignity** of the partner, conveying a message of humiliation and degradation.”

Finally, in this short analysis of the European Court of Human Rights practice related to human dignity of a victims of crimes, the case of *Mraović v. Croatia* from 2020.²⁷ Case facts: 14 April 2005 I.J., a basketball player with the Gospić Women’s Basketball Club, reported to the police that the applicant had sexually assaulted her. The applicant was arrested on the same day on suspicion of rape. On 15 April 2005 the local police force gave a detailed statement to the media concerning the incident, in which they disclosed the personal details and identity of the victim. This subsequently gave rise to a successful action by I.J. for damages against the State. On 30 June 2005 the applicant was indicted in the Gospić County Court on charges of rape. The proceedings before the Gospić County Court were closed to the public at the applicant’s request, in order to protect the private life of both the applicant and the victim. On 1 December 2005 the Gospić County Court acquitted the applicant. Following an appeal by the relevant State Attorney’s Office, at a sitting held on 14 December 2006 the Supreme Court quashed the first-instance judgment and remitted the case. The public were excluded from the Supreme Court sitting following a request by the applicant, with a view to protecting the private and family lives of the accused and the victim in accordance with section 294(4) of the Criminal Procedure Act. Permission to attend, in accordance with section 294(2) of the Criminal Procedure Act was granted to representatives of the Organization for Security and Co-operation in Europe (OSCE), who had been instructed to keep the contents of the hearings secret. In the resumed proceedings, the case was transferred to the Rijeka County Court. At the first retrial hearing held on 13 September 2007, the applicant requested that the proceedings be conducted in open court. He argued that OSCE representatives had

²⁷ Case of *Mraović v. Croatia*, Application no. 30373/13, Judgement, 14 May 2020.

already attended the sitting before the Supreme Court, and that the victim had given numerous statements to the media concerning the case. He stressed that during the proceedings he had been “continuously stigmatized by the media due to the exclusion of the public” from his case and “the inability of the media to transmit the real and objective state of the presented evidence”. The trial court dismissed the applicant’s request for the proceedings to be heard in open court. The applicant then applied for the recusal of the president of the Rijeka County Court and of the trial judge, claiming that, by dismissing his request for a public hearing, he had been put in a procedurally unequal position in view of the public campaign against him orchestrated by the victim. Referring to relevant international law which proclaiming that “women subjected to violence are enabled to testify in criminal proceedings through adequate measures that facilitate such testimony by protecting the privacy, identity and **dignity of the women**; ensure safety during legal proceedings”, “respect the security, **dignity, private and family life of victims** and recognize the negative effects of crime on victims”, “promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial”, Court, inter alia, finds, in para 48, 49 and 53, that its task to “establish whether in the specific circumstances of the applicant’s case the exclusion of the public from the trial before the Rijeka County Court had been justified and necessary. In doing so, the Court is called upon to balance, on the one hand, the applicant’s right to be tried in public and, on the other, the protection of the private life of a rape victim, which includes protecting her **personal integrity and dignity**”, “the importance of the protection of the rights of sexual abuse victims in criminal proceedings. In that sense, the Court subscribes to the assertion that in criminal proceedings concerning such a serious and intimate crime as rape, in line with the applicable international and European Union standards, the exclusion of the public from part or from the entire proceedings may be necessary for the protection of rape victims’ private life, in particular their identity, **personal integrity and dignity**. This might be necessary not only to protect the victims’ privacy, but to protect them from secondary and/or repeat victimization. The foregoing is crucial in order to encourage the victims of sexual abuse to report the incidents and allow them to feel secure and able to express themselves candidly on highly personal issues – often humiliating or otherwise damaging to their **dignity** – without fear of public curiosity or comment”, and “the reasons given by the Rijeka County Court for the exclusion of the public had a clear basis in domestic law, namely section 293(4) of the Criminal Procedure Act, and were aimed at protecting the private life of I.J., in particular **her dignity** and

personal integrity”. Finally, by six votes to one, Court finds that there has been no violation of Article 6 § 1 of the Convention.

4. Serbian penal legislation and the victims’ right to dignity

Since an intensive development of the procedural rights granted to victims by the international treaties and other sources of standards started a few decades in comparison with the procedural rights of the accused, therefore their transposition and implementation in national legal systems still lags behind the rights of the accused. This is also visible from the following analysis of the Serbian penal legislation which comprehensively recognizes the right to dignity as a procedural right of the accused and of the convicted person, but not of the victim/injured person in the criminal proceeding.

Article 157 of the **Criminal Procedure Code** (hereinafter: CPC)²⁸ provides for the obligation of the police to perform the search carefully, respecting the dignity of person and right to intimacy, without unnecessary obstruction of the house rules of order. Article 217 which regulates the treatment of detainees, emphasizes that, during detention the personality and dignity of a detainee may not be insulted. In addition to the dignity of the accused/detained person, the CPC also recognizes the dignity of the court. In the article 370 it is provided that, if the defendant, defense counsel, injured party, legal representative, proxy, witness, expert witness, professional consultant, translator, interpreter or other person attending the trial disturbs the order by disregarding orders of the president of the panel to maintain order or by insulting the dignity of the court, the president of the panel will caution him, and if that person continues to disturb the order, will fine him up to 150,000 dinars.

The right to dignity of the accused is also recognized by the Law on juvenile criminal offenders and the **Criminal Law Protection of Juveniles** (hereinafter: Law on Juveniles). In the art. 89, par. 1 of this law it is stipulated that during enforcement of criminal sanctions the juvenile should be treated in a manner proportionate to his age, apparent maturity and other personal circumstances, with respect to the dignity of the juvenile, encouraging his overall growth and participation in his own re-socialization, adhering to contemporary pedagogical, psychological and penology skills and experience. In the same manner is the provision of the article 122 which provides that the

²⁸ Criminal Procedure Code, “Official Gazette RS”, Nos. 72/11 of 28 September 2011, 101/11 of 30 December 2011, 121/12 of 24 December 2012, 32/13 of 8 April 2013, 45/13 of 22 May 2013, 55/14 of 23 May 2014 and 35/19 of 21 May 2019.

manner of escorting the juvenile in the rehabilitation institution may not violate the juvenile's dignity. Similarly, the article 135 of the same law which regulates the remand of the juvenile to a special institution for treatment and acquiring of social skills stipulates that the manner of bringing and escorting may not violate the dignity of the juvenile.

Criminal Code (hereinafter: CC) recognizes the notion of dignity in its several provisions, not exclusively those that addresses the right to dignity of an accused or sentenced person, but also through the provisions aimed at the protection of the right to dignity of a victim.

In the general part of the Code, art. 52, par. 2, it is provided that "community service is any socially beneficial work that does not offend human dignity and is not performed for profit."

In addition to this, the CC protects this right in through the several provisions of the special part of the Code. Therefore, in the article 137 (Ill-treatment and Torture) it is prescribed that "Whoever ill-treats another or treats such person in humiliating and degrading manner, shall be punished with fine or imprisonment up to one year."²⁹ The Chapter "Sexual offences" provides also the protection of this rights through the provision of the article 182a (Sexual harassment), par. 3 which stipulates that "sexual harassment is any verbal, non-verbal or physical behavior that aims at or constitutes a violation of the dignity of a person in the sphere of full life, and which causes fear or creates a hostile, humiliating or offensive environment."

Finally, the CC recognizes the human dignity in the Article 406, par. 1 (Maltreating of Subordinate or Junior) which provides for punishing a superior officer who in service or in relation to service maltreats a subordinate or serviceman of junior rank or treats them in a way that offends dignity.

However, it is important to mention that, despite the fact that the CC does not include the Chapter "Crimes against the human dignity and moral"³⁰ introduces in our criminal

²⁹ Even the human dignity is not mentioned in this official translation available at: <https://www.propisi.pravno-informacioni-sistem.rs/?lang=en>, last accessed on September 16, 2020, in original, Serbian version of the text, it exists: "(1) Ko zlostavlja drugog ili prema njemu postupa na način kojim se vređa ljudsko dostojanstvo, kazniće se zatvorom do jedne godine." Therefore, the proper translation could be also: "Whoever ill-treats another or treats such person in a manner that insults his/her dignity, shall be punished with fine or imprisonment up to one year."²⁹

³⁰ SRB: Krivična dela protiv dostojanstva ličnosti i morala

legislation in 1951, since it has been renamed in “Sexual Offences”³¹ the Law on Contracts and Torts (hereinafter: LCT)³² has kept “the old” notion of dignity. More precisely, article 202 stipulates that a person who has been frauded, coerced or abused into a relationship of subordination or dependence on a punishable act or a criminal act of fornication, as well as a person against whom another crime against the dignity of person and morals has been committed, has the right to fair monetary compensation for mental pain.

To summarize, neither CC, CPC, Law on Juveniles, Law on Enforcement of Criminal Sanctions or the Law on the Prevention of Domestic Violence do not recognize the right to dignity of the victim in terms of its procedural rights, but exclusively through the criminal protection of the human dignity as a human right, through the very limited circle of the offences.

5. The right of victims to be publicly recognized as victims, media treatment and their right to human dignity

5.1 The right of victims to be publicly recognized as victims

The right of crime victims to be treated with due respect in a manner which does not jeopardize their human dignity is not exclusively associated with the way on how the authorities and other participants in criminal procedure should act. It is also closely connected with the right of victims to be publicly recognize in that status. While some of them prefer to enjoy this important part of non-material (symbolic reparations), some other rather chose to “close this life chapter” as soon as possible and to continue their previous life. In both scenarios, media plays an important role.

For victims of certain categories of crimes, such as war crimes, enforced disappearances, terrorism, politically motivated crimes, etc. public recognition and recognition of victim status is often more important than recognition of that status in criminal procedure. The reason for that could be found in the “true telling” approach to an epoch and/or events that marked it. This also well recognized by the Victims Directive (par.16) which, as earlier mentioned, underlines that “victims of terrorism have suffered attacks that are intended ultimately to harm society. They may therefore need special attention, support and protection due to the particular nature of the crime that has been committed against

³¹ SRB: Krivična dela protiv polne slobode

³² Law on Contracts and Torts, “Official Gazette SFRY nos. 29/78, 39/85, 45/89, 57/89, “Official Gazette SRY no. 31/93, “Official Gazette SM no. 1/2003

them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society. Member States should therefore take particular account of the needs of victims of terrorism, and should seek to protect their dignity and security.”

For others, such as victims of rape or domestic violence, media exposure in the context of victimization brings a long-standing stigma that is difficult to break. What further aggravates the situation is the fact that the victim his/herself often has almost no influence on the quality and quantity of media attention paid to the case that led to victimization, as information reaches the media from various sources, often by “leaks” from the police, judiciary, but also from health and social care institutions. Finally, the unwanted amount, but also the modality of the victim's media exposure, are often related to his/her ignorance of his/her rights and obligations in terms of communication with the media.

Whether a victim choose public exposure or privacy, the way on how the whole case and a victim itself is treated by media is of the crucial importance to save his/her dignity.

5.2 Media legislation and the right to dignity

The **Law on Public Information and Media** (hereinafter: LPIM)³³ stipulates in the Article 74 that “information from ongoing criminal proceedings may be published if presented in the main hearing or providing that it has been obtained or that it may have been obtained from a public governmental authority on the basis of the law regulating access to the information of public importance. In addition to this, in the Article 77, it is prescribed that with a view to protecting the free development of the personality of a minor, special attention must be paid so that the media contents and media distribution method do not harm the moral, intellectual, emotional or social development of minors. LPIM insists on the protection of human dignity of persons to which information pertains shall be legally protected and defines the human dignity as honor, reputation, i.e. veneration. The law prescribes that Publishing of the information whereby the honor, reputation or veneration is injured, i.e. a person is presented in a false light by ascribing the attributes or characteristics that he/she does not possess, i.e. by denying the attributes or characteristics that he/she possesses, shall not be permitted where the interest to publish the information does not outweigh the interest to protect the dignity and right to

³³ Law on Public Information and Media, “Official Gazette RS”, br. 83/2014, 58/2015 i 12/2016.

authenticity, and in particular where that does not contribute to a public discussion on a phenomenon, event or person to which the information pertains.

Dignity of the victim of violence must not be injured by displaying or describing the scene of violence in a medium or in the media contents. Caricatural, satirical, montage and other similar displaying of faces shall not be considered an injury to dignity, i.e. to the right to authenticity. (Art. 79)

The law regulates in detailed an issue of the protection of the information relates to the private life and private records (a letter, diary, note, digital record and the similar), a record of an image (photographic, drawn, film, video, digital and the similar) and a record of a voice (tape recorded, phonographic, digital and the similar), conditioning their publication with the consent of the persons to whom they relate³⁴, or other persons³⁵, prescribing a number of situations³⁶ when publication is possible without consent, of

³⁴ A piece of information from the private life, i.e. a personal record (a letter, diary, note, digital record and the similar), a record of an image (photographic, drawn, film, video, digital and the similar) and a record of a voice (tape recorded, phonographic, digital and the similar), may not be published without the consent of the person to whose private life such information pertains, i.e. of the person whose words, image,

³⁵ If the person referred to in Article 80, paragraphs 1, 2 and 4 of this Law died, the consent shall be provided by the spouse of the deceased, by the child from the age of sixteen independently, by a parent, brother, sister, legal person that the deceased participated in (a body, member, employee) where the information, i.e. record pertains to his/her participation in such a legal person or by the person that the deceased has designated for such a purpose.

The right of the participant in the legal person to whom the information, i.e. records pertains personally shall not terminate with termination of the legal person. It shall be considered that the consent has been provided as soon as it is provided by one of the persons referred to in paragraph 1 of this Article, irrespective of the refusal of other persons to provide it. (art. 81)

³⁶ Exceptionally, the information from private life, i.e. a personal record may be published without the consent of the persons referred to in Articles 80 and 81 of this Law if in the particular case the public interest in disclosure of the information outweighs the interest in preventing the publishing thereof. In particular, it shall be considered that the public interest referred to in paragraph 1 of this Article outweighs the interest to prevent publishing of the information from private life, i.e. of a personal record of the person: 1) if that person has intended the information, i.e. the record for the public, i.e. delivered it to the medium with the aim of publishing it; 2) if the information, i.e. record pertains to the person, phenomenon or event of public interest, in particular where it pertains to a holder of a public office or political function, and publishing of the information is in the interest of national security, public security or economic wellbeing of the country, for the purpose of preventing disorder or crime, protection of health or morality, or protection of other persons' rights and freedoms; 3) if the person has attracted the attention of the public by his/her public statements, i.e. behaviour in his/her private, family or professional life and has thus given rise for publishing of the information, i.e. record; 4) if the information has been communicated, i.e. if the record was made in a public parliamentary discussion or in a public discussion in a parliamentary body;m5) if the publishing is in the interest of judiciary, national security or public security; 6) if the person has not objected to acquiring of the information, i.e. making of the record, although he/she was aware that that was done for publication purposes; 7) if the publication is in the interest of science or education; 8) if the publication is necessary to warn against danger (prevention of a contagious disease, finding of a missing person, prevention of fraud, etc.); 9) if the record pertains to a multitude of images or voices (fans, concert audience, protestors, passers-by in a street, etc.); 10) if it is a record from a public gathering; 11) if the person

which, in terms of victims' rights, the most important is those related to the situation in which that person intended the information or record to the public, i.e. provided it to the media for the purpose of publication or if the person did not object to obtaining information or recording, even though he knew that it was done for publication. (art. 80)

In addition to the mechanisms related to the right of the persons whose right has been violated by the publication of information to request publishing of the correction (art. 88-100 LPIM) the Law regulates in detail the mechanisms related to the judicial protection in cases where by publication of the information, i.e. of a record the presumption of innocence, prohibition on hate speech, rights and interests of minors, prohibition of public displaying of pornographic contents, right to personal dignity, right to authenticity, i.e. right to privacy is violated pursuant to the provisions of the Law.

The following may be requested by a claim:

- 1) determining that a right, i.e. an interest, has been infringed by publication of the information, i.e. of a record;
- 2) a failure to publish, as well as prohibition of repeat publishing of the information, i.e. record;
- 3) handing in of a record, removal or destruction of a published record (deletion of a video record, deletion of an audio record, destruction of a negative, removal from publications, and the similar).

The following persons have an active legitimization to submit a claim:

- 1) A person who is personally injured by publication of a piece of information, i.e. of a record shall be entitled to file a claim referred to in Article 101.
- 2) A legal person whose business activity is aimed at protecting human rights in cases of violation of a prohibition of hate speech and rights and interests of

is presented as a part of a landscape, nature, panorama, inhabited place, square, street or as a part of similar scene. (Art. 82)

minors (the consent of the person to which the piece of information pertains only) (arts. 101-102 LPIM)³⁷

The person referred to in the information the publishing of which is prohibited in compliance with this Law, who has suffered damage due to the publishing thereof, shall be entitled to compensation of material and non-material damages in compliance with the general regulations and provisions of this Law, independently from other means of legal protection available to such a person in compliance with the provisions of this Law. The person to whom no reply, correction or other information, the publishing of which has been ordered by a decision of a court of relevant jurisdiction, has been published, and who suffers damage due to such non-publishing, shall also be entitled to compensation of damage. (Article 112 LPIM).

In 2009, self-regulatory mechanisms of the media were established, with the adoption of the **Code of Journalists of Serbia** (hereinafter: the Code)³⁸, as well as the establishment of the Press Council (hereinafter: the Council) and its Press Complaints Commission.

The Code significantly specifies the provisions on privacy, dignity and integrity of persons to whom the published information relates, giving specific guidelines for reporting accidents and crimes, while not allowing the publication of names and photographs of victims and perpetrators that clearly identify them. Also, it is not allowed to publish any data that could indirectly reveal the identity of either the victim or the perpetrator, before the competent authority officially announces it. "A journalist must have an awareness of the power of media, or the possible consequences for the victim or the perpetrator, if their identity is disclosed. They must take into account, in particular, the weight of the possible consequences in case of any errors / incorrect assumptions in

³⁷ The person whose right would be violated by publication of the information, i.e. of a record referred to in Article 101 of this Law may request that the court, through an interim measure, and until the final completion of the proceedings at the maximum, prohibit the editor in charge to re-publish the same piece of information, i.e. record. The person filing a claim must make plausible that there is concrete danger that the piece of information, i.e. the record be published again, as well as that by the repeat publication of such piece of information, i.e. of the record, his/her right or interest referred to in Article 101 of this Law would be violated. The court must decide on the motion for determining an interim measure without any delay, and within 48 hours from the submission of the motion at the latest. An objection against the decision on determining an interim measure shall be filed within 48 hours from the receipt of the decision, and the court shall decide on the objection within 48 hours. (Art. 104) In addition to the claim referred to in Article 101, items 2) and 3) of this Law, as well as in addition to the motion for temporary prohibition of re-publication of the information referred to in Article 104 of this Law, the court of relevant jurisdiction may be requested to threaten the editor-in-charge with payment of an adequate monetary amount to the plaintiff if he/she acts contrary to the court decision. (art. 105)

³⁸ Serbian Journalists' Code of Ethics available at: <http://www.savetzastampu.rs/english/serbian-journalists-code-of-ethics/105/2015/11/03/serbian-journalists-code-of-ethics.html>, last accessed on August 26th 2020.

reporting. Even if the relevant state authorities publish information which are in the domain of privacy of the perpetrator or the victim, the media must not transmit that information. The error of the state authorities does not imply “permission” for the violation of ethical principles of the profession.” (Chapter VII of the Code)

The Code especially raises an attention to the specificity of the conditions the specificity of the situation preceded by victimization, stating that, in reporting on events involving personal pain and shock, the journalist is obliged to adjust his questions to reflect the spirit of compassion and discretion, while photographers and cameramen are obliged to crimes, treats with consideration and compassion.

The Code also prescribes an obligation of a journalist to ensure that a child is not endangered or placed at risk due to the publication of their name, photograph or recording with their image, house, the community in which they live or recognisable surroundings. (Chapter VII, par. 4 of the Code) The Code here recognizes the problem of lack of knowledge about the influence of the media on the part of representatives of state and public institutions dealing with child protection, who are sometimes unaware of the influence of the media and the way they work. “The information that they provide to journalists often involves disclosure of the identity of juveniles. A journalist must not abuse their good intentions or ignorance. Information received from doctors, social workers, teachers, and so on, which directly or indirectly refers to the identity of juveniles, must not be published.” (Chapter VII, par. 4 of the Code)

5.3 The right of a victim (not) to communicate with a media

Often, the source of numerous “harmful” information about the circumstances of the crime and the victim him/her self, is the victim himself (and / or his family and other close persons). The initial vulnerability caused by a state of shock, pain and fear, as well as insufficient awareness of rights and duties, make the victim susceptible to abuse. Due to the lack of adequate knowledge on the part of journalists, or due to conscious manipulation of the race for exclusivity, the victims are not presented with the positive and negative sides of media appearance, both in terms of efficient criminal proceedings and the need for rehabilitation and the preservation of the privacy and dignity.

When it comes to journalists, the Code of Journalists of Serbia contains clear and specific provisions that indicate the need to protect the interests of victims. Chapter IV, par. 3 of the Code it is provided that “victims and suspects are often not aware of the power of the media. A journalist is obliged to take that into consideration, and not to abuse the

ignorance of their collocutors. If a victim of a crime consents to be interviewed, a journalist must not reveal the identity of the victim or a possible perpetrator, on the basis of that conversation.” The Code also prohibits a usage of inappropriate, disturbing, pornographic and other content that may have harmful effects on children.³⁹ “A journalist is obliged to respect and protect the rights and dignity of children, victims of crimes, persons with disabilities and other vulnerable groups.” (par. 4-5)

5.4 Some recent cases of the harmful reporting on victims which affected their human dignity

5.4.1. “The Malča Barber”⁴⁰

Case facts: Twelve-year-old girl M.K disappeared on December 20, 2019 at 7.28 minutes, exactly 8 minutes after she left her family home and headed to the next village for school. As every day, M.K. went to school alone, the same way. The girl's teacher from the school, who told the police that she saw M.K. that morning on the road she always walks, also testified about that. The recordings from the security cameras of one facility, which is located about 500 meters from the girl's house, also testify to that. The video also showed a suspicious car behind the girl. The girl walked further down the street, and as it is assumed on the part of the street about 100 meters long, where there are no cameras, there are high fences on one side, and on the other field, the girl was abducted. The following security cameras are located at the entrance to the village and they would have to record the girl if she had passed there, but she was not on those recordings. Because of all that, it was considered that someone kidnapped the girl and drove her away.

After ten days of extensive search, including a large mobilization of the police and military forces numerous associations and a self-organized groups of citizens, accompanied with an appeal for help from her family and numerous false reports, the girl was found. A week after she was found, man who had abducted her, Ninoslav Jovanović, was arrested. Since he is the multiple recidivist, this was the forth time he was arrested for similar crime. Moreover, his atrocities are well-known, to the extent that he got the

³⁹ See more in: Stevanović, I. (2017) THE RIGHT TO PRIVACY OF THE CHILD AND MEDIA IN THE REPUBLIC OF SERBIA In the context of the protection of children labour abuse and exploitation, In: *Freedom, Security: The Right to Privacy*, (pp. 265-288). Novi Sad: Provincial Protector of Citizens - Ombudsman, Institute of Criminological and Sociological Research, ISBN 978-86-89417-04-3 (PZG) ISBN 978-86-80756-07-3 (IKSI).

⁴⁰ SRB: Malčanski berberin

nickname “The Malča Barber” since his deviant fetish of hair cutting young girls prior to rape them.

Considering all of this, but also all the relevant international standards and domestic legislation, it was expected to have at least professional if not deeply respectful reporting on the case. In reality, the situation was totally different. It started with the media speculations that the girl “the girl must have run away to get married since she is Roma girl and they simply act in that manner.” Once the police announced that she was abducted, and the identity of the girl was publicly announced to foster the search, media started a vulturous hike to the victim’s home, neighbourhood, school, but also, to all the places where some of traces were found. This approach was followed by inappropriate description of the objects found and used to torture the victim. Finally, the situation culminated when girl was found and several tabloids published her photos from the ambulance, showing the injured, terrified, exhausted, with her hair dramatically cut off, followed by the scandalous headlines describing the number and modalities of rape and torture she suffered.

The public reaction was strong and immediate, starting from the ordinary citizens on social networks, via human rights defenders, academic community, media associations and politicians. Within a months, the Press Council received as many as 25 complaints, which were sent by the girl's parents, various organizations, but also citizens. The members of the Complaints Commission of the Press Council unanimously made the decision that five daily newspapers violated several provisions of the Code of Journalists of Serbia in their articles about the abducted girl. According to the members of the Complaints Commission, the dailies Alo, Kurir, Informer, Srpski Telegraf and Blic, as well as their portals, violated several points of the Code of Journalists of Serbia. In a series of articles about the abduction that stirred up the public, **journalists did not respect the dignity of children and victims of crime**, their integrity and the ban on revealing the identity of children. Several texts also violated the provision that refers to the abuse of other people's emotions by transmitting the statements of the kidnapped girl's family.⁴¹

5.4.2 The murder of Strahinja Stojanović

Case facts: On September 13th 2020, all the media promptly reported on the car explosion of the luxurious car on the street 15minutes after noon. It was reported that two persons were in the moving car in the moment of explosion. Shortly after the initial news the most

⁴¹ See more at: <http://www.savetzastampu.rs/english/minutes-of-session-of-the-commission>

of the tabloids reported that the driver Strahinja Stojanović (30) has just died in the hospital despite the great efforts of the medical team to save his life. Together with reporting on his name, the media reported that “Strahinja was well known to the police, and in the media he was associated with brothers Branislav and Slobodan Šaranović from Montenegro, who were liquidated in a brutal mafia war that has been raging for years between Montenegrin clans. Stojanović also appeared as a witness at the trial in the case of the murder of Nikola Bojović, Luka Bojović’s brother, who had been at war with the Šaranović for years.”⁴²

Similarly to the case of the Malča barber, scandalous headlines appeared, but this time immediately after the explosion occurred. The tabloids published the main facts on the explosion inviting readers, in the same text, to take a look at the news “to see the photo of dying Strahinja laying down the road and his girlfriend trying to save his life.” The same photo which included described content was published in all the tabloids, almost at the same time followed by the detailed description of the medical procedure conducted by the medical team (both legs amputation) prior to the death.

Contrary to the reasonably expected shock or protest of the public due to the fact that the moving car was remotely detonated in the middle of the day, where young man was killed and his girlfriend was injured, followed by the massive media attack on the victim’s dignity, the public reaction was completely opposite! Triggered and/framed by the promptly announced criminal background of the victim, it was almost impossible to found any public concern relating to abovementioned issues. Moreover, a dozens of comments were posted on the media portals and the social networks saying that “the members of mafia certainly deserve that” or commenting on the moral and ethical profile of the victim’s girlfriend and the family. None of media associations, neither the Press Council has reacted upon this.

6. Does the right to human dignity equally applies to all victims?

If we try to perceive the both cases in the light of relevant international standards addressing the human dignity of victims, but also in a view of the Serbian positive legislation (penal, but also those applying to media) it is not so hard to see that there is:

⁴² See more at: <https://www.en24news.com/2020/09/strahinja-was-the-owner-of-the-car-plot-not-a-criminal-sonja-told-at-the-hearing-what-was-happening-on-the-day-when-stojanovic-was-killed.html>, last accessed on September 15th 2020.

- An obvious gap in terms of the efficient and effective transposition and implementation of the relevant international standards in Serbian legislation. This gap is even a more problematic when it comes to the penal legislation compared with the media regulations and needs to be addressed as soon as possible to ensure a proper protection of human dignity for all victims in practice.

- A serious practice of the violation of the victim's right to dignity, followed by an absence of the reaction of the authorities in charge of criminal prosecution. This keeps the violations in the sphere of the professional code of conduct and eventually some monetary penalties, which are frequently perceived by the editors and the media owners as a "collateral damage" necessary to gain the highest possible circulation.

Finally it shows how much a selectiveness still appears in the public in terms of the perception of the victims' right to dignity, but also in terms of the victims' rights in general. A "freedom" of violating this right, but also the public perception of the need to react upon that are highly affected and determined by the personal characteristics of a victim and/or offender, including nationality, age, sex, family and professional background and a previous private life, despite the widely proclaimed principle of non-discrimination. This shows that the problem significantly surpasses a legal scope and requires a continuous and comprehensive social reaction, focused not only on adjusting legislation and implement it through the prosecution and a proper penalties, but also through the widest possible awareness raising activities aimed at changing a perception of victims and their rights in the society.

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