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ACCESS TO JUSTICE AND HUMAN DIGNITY: A SPECIAL FOCUS ON APPEALS IN PUBLIC PROCUREMENT LAW

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Abstract: *The right to dignity is not merely a theoretical or abstract notion, but a fundamental right that constitutes the basis of all other fundamental rights. This study examines the relationship between the right of access to a court in the field of public procurement and the right to human dignity. The obstacles identified in the system of judicial remedies disproportionately affect small enterprises, social economy actors, or organisations operating in disadvantaged regions – categories that are frequently under-represented in public procurement procedures. Denying these actors real access to justice can lead to legal and economic exclusion, undermining inclusion, equal opportunities and human dignity.*

Key words: *human dignity, access to justice, public procurement, legal remedies, inclusion*

1. Introduction

Public procurement represents the process through which public authorities or contracting entities acquire works, products or services from economic operators in order to meet public needs, in accordance with the principles of transparency, fair competition and the efficient use of public funds.

Human dignity, on the other hand, is a concept that can be analysed from multiple theoretical perspectives. In the law of the European Union, human dignity has been regarded as an *inviolable* value which must be *respected and protected* (Article 1 of the Charter of Fundamental Rights of the European Union). In legal scholarship, dignity has been defined as the *recognition that every human being possesses an intrinsic value that must be respected and protected both by law and by others* (McCrudden, 2008, p. 679), or as a dynamic foundation of justice, which places upon the State the obligation to *ensure effective access to remedies and equal participation in processes that affect individual rights* (Palombella, 2021, p. 124).

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At first sight, public procurement and human dignity may appear to be distinct and even unrelated concepts: the former concerns technical administrative procedures carried out between impersonal legal entities, whereas the latter evokes the intrinsic value of the human person. This opposition, however, is only apparent.

Public procurement procedures are closely linked to the right of access to justice. European norms grant Member States a wide margin of discretion in shaping their systems of remedies, but impose a set of principles aimed at guaranteeing their effectiveness, efficiency and promptness.

Participation in public procurement is not limited to large corporations. An important part of the market is represented by micro-enterprises and small and medium-sized enterprises (SMEs), which, particularly in rural or economically disadvantaged areas, contribute to community development and to the absorption of European funds. For these smaller operators, who often have limited financial capacity and real difficulties in accessing and understanding the digitalised public procurement system, the possibility of making effective use of available remedies is essential. It contributes not only to the protection of their economic interests, but also to the recognition and respect of the dignity of the persons whose work, livelihoods and communities depend on the outcomes of public procurement procedures. This includes entrepreneurs, their employees and, not least, local residents as final beneficiaries of public services.

2. Human Dignity: Normative Content and Relevance in the Contemporary Legal Order

Human dignity is a value that occupies a central place in the framework of fundamental rights. It is recognised in the European legal order as a value that underpins the entire normative system of the protection of the individual. The notion of dignity is the result of a complex historical and philosophical evolution. The modern concept of dignity was first evoked by Kant, who described the human person as the only being capable of moral self-restraint and, therefore, as bearing an intrinsic value that cannot be reduced to utility or instrumental interest. Thus, dignity is not acquired by the human being, nor is it granted by the state, and it does not depend on social validation; it represents an inherent attribute of the human person.

Following the Second World War, as a result of the atrocities committed against millions of people, the need was felt to elaborate international instruments concerning human rights, and dignity became their foundation, as a reaction to the reduction of the human being to the status of a dispensable object. In the Preamble of the Universal Declaration of Human Rights (United Nations, 1948), it is affirmed that *all human beings are born free and equal in dignity and in rights*.

Subsequently, in European Union law, the Charter of Fundamental Rights provides in Article 1 that *human dignity is inviolable* and *must therefore be respected and protected* (Charter of Fundamental Rights of the European Union, 2000, art. 1). The term *inviolable* is understood as excluding the possibility that dignity could be weighed or relativised in relation to competing interests. While, generally, individual rights may be subject to limitations or restrictions under certain conditions, the right to dignity cannot be restricted, negotiated or subjected to any test of proportionality (Court of Justice of the

European Union, 2001, paras. 70–77). Consequently, this formulation places dignity at the apex of the hierarchy of social values.

Similarly, Article 1(3) of the Romanian Constitution defines human dignity as one of the supreme values of the state, alongside other fundamental rights and freedoms, the free development of the human person and justice (Constitution of Romania, art. 1(3)). This constitutional regulation highlights the essential role of dignity in the legal protection system of all other rights: in the absence of this foundation, the remaining rights would represent merely procedural guarantees, lacking substantive justification.

From a legal perspective, dignity may be analysed from three interconnected viewpoints: dignity as a fundamental value, expressing the ethical foundation of the legal order; dignity as a principle of law, determining the interpretative standard governing the definition and application of all other rights and dignity as a subjective right, capable of grounding concrete legal claims and ensuring the protection of the person against degrading treatment, exclusion, or discrimination.

In legal doctrine, it has been emphasised that human dignity is not a univocal or static concept, but rather a guiding thread upon which the entire system of fundamental rights rests. Dignity represents a framework notion that governs the interpretation and harmonisation of all other rights, thus preventing the emptying of meaning of all other concepts concerning fundamental rights (McCrudden, 2008, p. 679). Therefore, dignity is not merely a theoretical notion invoked rhetorically, but must be understood as a dynamic concept articulating the relationship between the individual and public authority.

Thus, dignity essentially requires the recognition of the individual as a distinct subject of law, holder of legitimate interests and beneficiary of full decision-making autonomy, who must be treated with due respect and not reduced to the role of an instrument. This position of the individual presupposes the possibility to participate, on an equal footing, in administrative and judicial processes that affect his or her rights and legitimate interests. Public authorities cannot regard the individual as the object of a technical decision; on the contrary, their actions must reflect the intrinsic value of the human being.

From a legal standpoint, dignity has a dual significance: it is both a constitutional right and a mechanism for establishing minimum standards of protection of the person, such as the prohibition of inhuman or degrading treatment, the protection of personal autonomy, the guarantee of equal recognition, and the prevention of discrimination and unjustified exclusion. Thus, dignity is closely linked to the individual's ability to be heard by public authorities, to freely express his or her position, and to avoid being reduced to a passive object.

Therefore, human dignity is not a mere philosophical ideal, but a concrete legal principle with direct implications for the definition, interpretation, and practical application of fundamental rights. By virtue of its status as a supreme and inviolable value, dignity represents a final criterion of the legitimacy of the exercise of public authority and of the legal recognition of the individual.

3. Access to Justice and the Protection of Vulnerable Categories

Access to justice represents a condition-right which guarantees that all other rights can be exercised effectively. Beyond its procedural function, access to justice has been rightly regarded in legal doctrine as a condition of legality itself, and not merely as one fundamental right among others (Palombella, 2021, p. 122). This character signifies that any restriction which effectively prevents individuals from addressing a court has the potential to affect not only their particular interest, but also the balance between public authority and the individual.

In practice, we observe that the obstacles to access to justice are not distributed equally. They affect especially disadvantaged categories, that is, persons with limited economic and social resources: low-income individuals, employees, local communities, as well as small and medium-sized enterprises (SMEs). The joint FRA–ECtHR Handbook notes that these impediments are not limited to the issue of court fees, but also include the lack of legal representation, excessively short procedural time limits, and practical difficulties in understanding and using complex legal procedures (FRA/ECtHR, 2016, pp. 38–40).

SMEs find themselves in such a structurally vulnerable position: although they are required to comply with the same legal framework as large economic operators, they do not have the same financial, organisational or legal capacity to initiate and sustain litigation. Legal doctrine has argued that the impossibility of access to justice caused by financial constraints transforms the exercise of rights into a privilege conditioned by economic power (Niemann, 2021, pp. 2–3). This vulnerability is even more evident in economically disadvantaged or rural areas, where small local businesses depend on contractual relations with public authorities in order to sustain themselves and support the community.

In Romanian legal doctrine, access to justice has also been regarded as a fundamental principle of the rule of law (Friedmann-Nicolescu, 2017, p. 6). However, the formal recognition of the right of access to a court does not compensate for the absence of its effective exercise, and the transition from formal equality to real equality depends on the capacity of the judicial system to reduce such asymmetries.

We can thus highlight the direct link between access to justice and human dignity. Dignity presupposes the recognition of each person's right to participate in procedures that concern their rights and legitimate interests. When the natural person or even the private legal person is excluded from the real possibility of challenging a decision taken by public authorities, such exclusion causes an indirect but significant infringement of human dignity.

Therefore, even in the field of disputes relating to public procurement, which seemingly concern only economic operators and not natural persons, the dimension of dignity remains present. Behind every economic operator stand concrete individuals: entrepreneurs, employees, and local communities whose living conditions depend on the outcome of procurement procedures. Obstacles or restrictions regarding access to remedies in public procurement directly affect living conditions, financial security and social inclusion, thereby influencing human dignity indirectly, yet profoundly.

4. The System of Remedies in Public Procurement with Special Regard to the Legal Remedies Available

The system of remedies in the field of public procurement is established by Law No. 101/2016, which transposes into domestic legislation Directive 89/665/EEC and Directive 92/13/EEC. The European directives do not oblige the Member States to establish a specific system of judicial remedies, but require, as a matter of principle, that they ensure effective and rapid means of redress which either lead to the suspension of the execution of an unlawful act of the contracting authority or remove such irregularities by annulment, termination, unilateral withdrawal or by obtaining damages. Therefore, in the conception of the European rules, the public procurement procedure goes through two stages, one pre-contractual and the other post-contractual. The first stage concerns the legality of the acts issued by the contracting authorities in the award procedures up to the moment of concluding the public procurement contract, while the second stage concerns the performance of the contract as well as the causes of early termination.

The Romanian legislator has maintained the procedural sequencing found in the European directives and has configured different remedial systems for each of these stages.

It is important to underline that all award procedures are carried out through an electronic public procurement system (SEAP), where the contracting authorities are obliged to initiate, publish and manage the procurement procedures. For example, contracting authorities publish in the SEAP system the contract notices, the award notices, the tender documentation and, likewise, the offers submitted by the economic operators are published in this same electronic system, and the entire correspondence between the participants in the procedures is also carried out there. The electronic system is designed to provide transparency to public procurement procedures, to reduce physical interaction and the administrative burden.

The intention of the legislator was, in principle, to ensure a fair and transparent system, which, to a large extent, has indeed been achieved. However, public procurement procedures are not intended only for economic operators with strong financial capacity. In economically disadvantaged areas or in small localities, the granting of European funds for the development of infrastructure or for improving public services is a means of ensuring a decent standard of living for the population. Therefore, for these disadvantaged areas, it is essential that public procurement procedures are effectively accessible and not only theoretically available.

For these small enterprises and micro-enterprises, the easy access to the SEAP electronic platform is conditioned, among others, by digital literacy, access to IT infrastructure, their administrative capacity and, not least, by the real possibility of understanding and interpreting the documentation uploaded into the system.

We may therefore argue that the technical inequalities affecting these disadvantaged participants have indirect implications for the individuals behind these small entrepreneurs, whether company administrators or simple employees. Through the lack of access to procedures or through the misunderstanding of these procedures, the individuals involved are deprived of the opportunity to access public funds which are beneficial not only to the local community but also to their personal economic well-being.

With regard to the remedial procedures, Article 2 of Law No. 101/2016 provides that any person who considers that a right or a legitimate interest of theirs has been harmed by an act of the contracting authority, or by the failure to resolve a request in due time, may request the intervention of the competent court or of the competent administrative-jurisdictional body. The available remedies include the annulment of the act, the obligation of the contracting authority to issue the requested act or to adopt corrective measures, as well as the recognition of the claimed right or legitimate interest.

In the pre-contractual stage, the legislator granted the interested persons the right to choose between an administrative-jurisdictional procedure and an exclusively judicial one. The administrative-jurisdictional procedure involves filing a complaint before the National Council for the Settlement of Complaints (CNSC), the specialised administrative-jurisdictional body for settling complaints lodged in public procurement procedures. The proceedings before the CNSC are adversarial and conducted with respect for the right of defence (Article 15 of Law No. 101/2016), but they are carried out in written form and only exceptionally, if the Council considers it necessary, may the parties be heard (Article 21 of Law No. 101/2016). Moreover, the procedural time limits for the complaint are very short (3 days, 5 days, 10 days), which means that the complainant must be constantly alert and prepared both technically and legally for any clarifications requested by the Council. Of course, the law allows the parties to be represented by a lawyer or legal adviser (Article 21 para. 2 of Law No. 101/2016), but such representation involves significant costs.

After the decision is issued by the CNSC, the law provides a means of challenge before the court, namely the judicial complaint (*plângerea*). Jurisdiction to settle it lies with the Court of Appeal and, in principle, this is a devolutive appeal in the sense that both grounds of illegality and lack of merits may be invoked (Article 29 of Law No. 101/2016). However, the devolutive character is strictly limited by the fact that new evidence may not be produced other than what was submitted before the Council (Article 31 para. 3 of Law No. 101/2016). This circumstance, together with the same short procedural time limits and the abbreviated procedure for communicating documents, leads us to the question of whether the parties have effective access to a court, given that the court has limited possibilities and powers in resolving the complaint.

It must be emphasised that when filing the administrative-jurisdictional complaint, the complainant must pay a procedural financial security (*cauțiunea*) amounting to approximately 2% of the estimated value of the contract (Article 61^1 of Law No. 101/2016), and for the settlement of the complaint by the court an additional court fee must be paid, which, at the stage of contesting the acts issued in the pre-contractual phase, is modest (50 lei ≈ 10 Euros), the claim being considered non-assessable in money. Currently, the law does not allow the parties to obtain exemptions or instalments for the payment of the security, but it allows, to a limited extent, the possibility of obtaining exemptions or instalments for the court fee (Article 42 para. 2 of Government Emergency Ordinance No. 80/2013).

For the post-contractual stage of public procurement, the legislator configured three parallel procedures. Thus, in the case of disputes concerning damages, as well as those concerning the performance, annulment, nullity, termination, rescission or unilateral

denunciation of contracts, jurisdiction belongs to the administrative litigation sections of the tribunals, sitting in specialised panels for public procurement (Article 53 para. 1 of Law No. 101⁄2016). In the case of the same categories of disputes, except for claims for damages, but arising from causes independent of the contracting authority, jurisdiction belongs to the administrative litigation sections of the tribunals, without the law requiring the specialisation of the panels. Finally, in the case of disputes concerning documents issued by contracting authorities containing information relating to the fulfilment or non-fulfilment of contractual obligations by the economic operator, jurisdiction is again vested in the administrative litigation sections of the tribunals, without the law requiring the specialisation of the panels (Article 53 para. 1^3 of Law No. 101⁄2016).

Regarding the available remedies, the legislator introduced another innovation by providing different appeal routes, without correlation with the two previously regulated procedural paths. Thus, it was established that in the case of disputes concerning contract performance assessment report relating to the performance of the contract, the only remedy is the cassation appeal before the Court of Appeal; whereas, in the case of the other disputes regarding damages, contract performance, nullity and other causes of ineffectiveness, the judgment may be challenged by appeal before the Court of Appeal, again with the requirement that panels be specialised in public procurement.

As we have emphasised in a previous study (Cozgarea and Cătană, 2024), the cassation appeal is **not** an equitable remedy in administrative law disputes where it constitutes the sole remedy provided by law, since the court may examine only strictly defined grounds of illegality and the evidentiary framework is limited exclusively to written documents. Under these circumstances, a system in which the **only** remedy available is the cassation appeal does **not** constitute a genuine second level of jurisdiction and may raise concerns regarding the **effective access to a court**.

In addition to the ambiguous manner of drafting, which created interpretative difficulties for all participants in the procedures – both contracting authorities and economic operators – this legislative configuration also generated non-uniform case-law at the level of the courts, which in turn caused delays in proceedings and affected the rights and legitimate interests of all parties involved.

Interpretative problems arose both with regard to jurisdiction and the routes of appeal. For the full clarification of the normative framework, it should be added that since the entry into force of Law No. 101⁄2016, it has been amended at least five times, the jurisdiction of the courts in disputes relating to the performance of public procurement contracts oscillating between administrative litigation courts and ordinary civil courts, and the applicable remedy oscillating between appeal and cassation appeal.

Divergent case-law emerged in relation to the legal classification of the object of claims, as it was difficult, in the absence of a statutory definition, to determine what the legislator intended by *claims for damages arising from causes independent of the contracting authority*, as well as in relation to the interpretation of the legal provisions governing the available remedies. In terms of subject-matter jurisdiction, courts reached situations of mutual declination of competence between administrative litigation sections and civil sections; and with regard to remedies, in some cases courts granted

appeal routes not provided by law.

This latter situation was caused by differences in the drafting of the same legal article, but in different paragraphs, the legislator using expressions with contradictory legal effect, such as "the decision is subject only to cassation appeal" and "the decision may be challenged by appeal".

Since Article 483 para. 1 and the final sentence of para. 2 of the Code of Civil Procedure provides that decisions given on appeal are subject to cassation appeal, and that decisions given on appeal are not subject to cassation appeal when the law provides *only* the remedy of appeal, some courts opened the path of cassation appeal even when the statute intended to exclude it.

It was therefore necessary for the High Court of Cassation and Justice to intervene, both through the appeal in the interest of the law (RIL) (HCCJ, Decision RIL No. 11/2023), and through regulators of jurisdiction, in order to unify the divergent solutions, establishing jurisdiction in favour of the administrative litigation courts and confirming the exclusive character of the appeal as the remedy in disputes concerning the performance of public procurement contracts (HCCJ, Decision No. 4198/2025).

These oscillations of the legislator have undoubtedly caused delays in public procurement procedures, distancing the Romanian system of remedies from the principles of effectiveness and promptness required by the European directives. Clearly, the right of access to a court has been affected, with implications for the fundamental right to human dignity of the individuals behind the economic operators, for whom the resolution of disputes within an optimal and foreseeable time is essential.

5. Conclusion

The research undertaken in this study demonstrates, in our view, that the necessity of modifying the system of remedies regarding disputes arising from the performance of public procurement contracts is, beyond doubt, a certainty. We understand and acknowledge the need for rapid remedies that restore legality or repair possible damage caused during the award procedures or during the performance of contracts. However, speed and digitalisation do not always mean effectiveness or quality of solutions. What is essential for the majority of economic operators and contracting authorities becomes, for a minority composed of disadvantaged categories of persons, without access to digitalisation or without knowledge in the field of electronic communication, namely small and medium-sized enterprises, micro-enterprises unable to employ specialised personnel in the management of electronic tendering procedures, and natural or legal persons who cannot afford the costs of such litigation, a set of insurmountable obstacles to access to justice. The State must provide support mechanisms by ensuring legal assistance for those who cannot afford the costs, by digital education, and by specialised counselling concerning the procedures.

With regard to the system of remedies, and in particular to the appeal routes, we consider it necessary to amend the legislation in the sense of integrating the public procurement procedure within the system of remedies specific to administrative law.

By analysing the legislation of European states with tradition in the field of public procurement, such as, for example, France, Italy, Spain or Poland, we note that the majority have regulated a system of remedies consisting of two levels of jurisdiction plus a cassation appeal before the supreme court. The exception is Spain, where, in public procurement procedures in which public authorities of the autonomous regions or central authorities act as contracting authorities, against judgments on the merits only a cassation appeal may be lodged before the Supreme Court (Cozgarea, 2025, pp. 33–47).

We therefore conclude that, in comparison with the other legal systems examined, the speed and efficiency of remedial procedures result from the clarity and stability of the legislation, and not from the suppression of available appeal routes. Consequently, whichever direction the legislator chooses in amending Law No. 101/2016, such amendment should ensure clarity, stability and predictability within the system of appeal routes.

Access to justice means, in essence, respect for the right to human dignity, because this intrinsic fundamental value of the person means, among other things, the recognition of the equal worth of each individual, and access to justice is the mechanism that guarantees that this value does not remain merely theoretical.

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