

# RESPECT FOR HUMAN DIGNITY – THE FUNDAMENTAL PRINCIPLE OF ROMANIAN AND EUROPEAN PENAL ENFORCEMENT LAW

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**Abstract:** *Dignity represents the foundation of the fundamental rights of every person, acknowledged as such by all documents concerning their protection. This paper aims to present, at both theoretical and jurisprudential levels, the ways in which human dignity is protected, guaranteed, and respected in the field of criminal enforcement law, being elevated to a fundamental principle under the provisions of Article 4 of Law no. 254/2013: “Penalties and measures involving deprivation of liberty shall be executed under conditions that ensure respect for human dignity.” Alongside the prohibition of torture and inhuman or degrading treatment, the respect for human dignity also includes the states’ obligation to protect the health of all persons deprived of liberty, by ensuring access to proper medical treatment and detention conditions that do not cause additional suffering to incarcerated individuals. Deprivation of liberty must not equate to deprivation of dignity. The paper will also analyze the case law of the European Court of Human Rights and European regulations, since human dignity is part of European Union law. The European Prison Rules REC(2006)2 of the Council of Europe are of particular importance, as they establish clear obligations for authorities responsible for the custody of detainees in member states, aiming to prevent violations of human dignity. All of these contribute, from a reparatory and protective perspective of criminal justice systems, to a greater respect for the human dignity of the individual, while also aiming to protect society and rehabilitate inmates, thus facilitating the achievement of re-education goals of the punishment.*

**Key words:** *human dignity, detainees, penal enforcement law, jurisprudence*

## 1. Dignity – The Fundamental Principle of Human Rights

Human rights may be defined as universal guarantees enshrined in laws, treaties, and conventions, designed to protect the dignity, equality, and freedom of the individual

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against potential abuses committed by the state or by other persons.

Dignity appears explicitly in all instruments concerning the recognition and protection of human rights, as it constitutes the foundation of every person's fundamental rights; without its protection, the acknowledgment of other civil or political rights becomes merely illusory. At its core, dignity represents the need of every human being to be recognized and treated as a human by all others. The violation of human dignity entails the disregard of fundamental values—freedom, dignity, and equality—which are interdependent and inseparable from the human condition and the existence of the individual.

The central role of human dignity was acknowledged as early as 1948, upon the adoption by the United Nations of the Universal Declaration of Human Rights (Universal Declaration of Human Rights. Resolution 217 A (III); 1948). The concept of human dignity is incorporated in the preamble, which affirms that “the 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.”

Article 1 further establishes freedom, equality, and dignity as fundamental values of human rights, providing that “All human beings are born free and equal in dignity and rights.” Article 5 explicitly reinforces the principle of protecting human dignity by prohibiting torture and cruel, inhuman, or degrading treatment or punishment.

Given the paramount importance of safeguarding human dignity, the International Covenant on Civil and Political Rights (ICCPR) (Resolution 2200 A (XXI); 1966a) of 16 December 1966 was adopted in accordance with the principles laid down in the UN Charter, precisely to reaffirm the inherent dignity and the equal and inalienable rights of all members of the human family. These rights constitute the foundation of freedom, justice, and peace in the world, deriving from the dignity inherent in the human person. The Covenant protects personal integrity, liberty, equality, and prohibits torture and degrading treatment.

Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations; 1966b), adopted on the same date, recognizes the need to protect those rights that stem from the dignity of the human being.

UN General Assembly Resolution 43/173 of 9 December 1988, establishing the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, provides that “all persons under any form of detention or imprisonment shall be treated with humanity and with respect for the inherent dignity of the human person.”

The European Convention on Human Rights (ECHR) does not explicitly codify a right to human dignity; however, Article 3 explicitly guarantees it by prohibiting torture and inhuman or degrading treatment or punishment. The case law of the European Court of Human Rights is extensive in this respect, particularly regarding persons deprived of liberty or held in state custody, situations in which the state is obliged to respect and protect the dignity of all persons under its authority.

Furthermore, Article 1 of the Charter of Fundamental Rights of the European Union stipulates that human dignity is inviolable and must be respected and protected.

Comparable provisions appear in other international instruments, such as the

Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

In recognition of the need to protect and uphold human dignity, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted at the international level, establishing for the contracting states a set of positive and negative obligations aimed at both preventing and repressing torture and other practices that flagrantly violate human dignity.

At the European level, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was adopted, creating an extrajudicial mechanism intended to prevent such treatment of persons deprived of liberty, through cooperation with national authorities.

The Convention established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), whose mandate includes visiting places where individuals are deprived of liberty by a public authority and issuing reports containing recommendations to the respective state. The Committee operates under two fundamental principles: cooperation and confidentiality. Its purpose is not to condemn states, but to assist them in preventing ill-treatment of persons deprived of liberty.

At the national level, Romania recognizes and protects human dignity by granting it constitutional status. Article 1 of the Constitution provides that “Romania is a democratic and social state governed by the rule of law, in which human dignity, the rights and freedoms of citizens, the free development of human personality, justice, and political pluralism represent supreme values and are guaranteed.”

Additional constitutional provisions concern the prohibition of torture or inhuman or degrading punishment or treatment (Article 22 paragraph 2), as human dignity constitutes a supreme value protected by the rule of law; likewise, freedom of expression may not infringe upon a person’s dignity, honor, private life, or right to their own image (Article 30 paragraph 6).

Article 23 paragraph 2 of the Constitution establishes the conditions under which the competent state authorities may carry out searches, detentions, and arrests, the constitutional legislator providing that such measures “are permitted only in the cases and under the procedure provided by law,” which must always be interpreted in conformity with Article 1 paragraph 3 of the Constitution.

The protection of human dignity is also ensured under criminal law, through the incrimination of specific offenses, as well as under civil law. Article 72 of the Civil Code stipulates that every person has the right to respect for their dignity; any infringement of a person’s honor or reputation is prohibited without their consent or without observance of the limits established by the treaties and conventions to which Romania is a party.

## **2. The Need to Protect Human Dignity in the Enforcement of Sentences and Other Measures Involving Deprivation of Liberty**

During the execution of custodial sentences within the penitentiary system, human

dignity may be frequently impaired. National and international regulations expressly draw attention to this risk and impose, as a preventive measure, the obligation that any person subjected to detention or imprisonment be treated with humanity and with respect for the inherent dignity of the human person (Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN General Assembly Resolution 43/173 of 9 December 1988).

This requirement stems from the fact that dignity constitutes the most sensitive sphere that delineates the boundaries of private life, interpersonal interactions, and the security and integrity of the individual. In many cases, the violation of human dignity serves as the initial cause of a chain of subsequent infringements of other human rights. It may even be asserted that human dignity functions as the primary limit on the freedom of others and on equality in rights.

Although any punishment inherently contains elements that may be perceived as humiliating, an inhuman or degrading punishment distinguishes itself from ordinary punishments by treating the individual as an object in the hands of public authorities, thereby infringing upon values related to dignity and the physical integrity of the person.

The assessment of the degree of suffering caused is a relative matter that depends on all the circumstances of the case, particularly the nature of the punishment, the context in which it was imposed, and the manner of its execution. Despite the fact that the limits of dignity are legally established, the concept nevertheless encompasses a wide range of subjective perceptions, since one's view of their own dignity—and of the dignity of others—is directly influenced by each person's system of values, both material and spiritual, as well as their experiences and living conditions. Consequently, the violation of dignity will be perceived differently depending on the religious, political, or cultural convictions, social status, level of well-being, and circumstances in which the act occurred, as well as on the identity of the offender and that of the victim.

The publicity of the execution of a sanction may also contribute to its degrading nature, although it is not a decisive factor, since humiliation may occur even in the eyes of the individual alone, without reference to third parties.

Any person subjected to detention must therefore be treated with humanity and respect for the dignity inherent in the human person.

In order for a sanction not to be considered inhuman or degrading, the primary obligation of respecting human dignity lies with state agents—those entrusted with supervising persons deprived of liberty. They must refrain from making expressions or gestures that are insulting, humiliating, degrading, or discriminatory and must ensure that the human dignity of detainees is not violated by other persons deprived of liberty through similar conduct.

Similarly, the state bears the obligation to respect the dignity of every person in its custody by ensuring detention conditions that do not infringe upon this fundamental right.

The obligations of states regarding the protection of the health of all persons deprived of liberty also fall within the broader framework of respecting human dignity. These obligations include ensuring access to appropriate medical treatment as well as detention conditions that do not cause additional suffering to incarcerated individuals.

Article 10 of the International Covenant on Civil and Political Rights provides that “All

persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,” thereby regulating for the first time matters concerning the execution of custodial sentences. The Covenant expressly states that persons held in pretrial detention must be separated from convicted persons; that minors in pretrial detention must be held separately from adults; and that their cases must be resolved with priority so that they remain deprived of liberty for as short a period as possible. Furthermore, the Covenant affirms the re-educational function of the penitentiary system, emphasizing that the penitentiary regime must include a system of treatment for convicted persons whose essential purpose is their reform and social reintegration.

### **2.1. Protecting the Human Dignity of Prisoners at the Level of the European Union**

Respect for human dignity during the execution of criminal sanctions—particularly custodial sentences—has long constituted a significant element on the agenda of European institutions, giving rise to a series of special regulatory instruments. The deprivation of liberty inevitably causes psychological suffering; however, state authorities are under a strict obligation to ensure conditions that comply with the requirements of human dignity.

One of the first instruments adopted in this context is Recommendation No. R (99) 22 of the Committee of Ministers to member states concerning prison overcrowding and prison population inflation. Adopted on 30 September 1999 at the 681st meeting of the Ministers’ Deputies, Article 18.1 provides that detention facilities, especially those intended for the accommodation of prisoners during the night, must respect human dignity and privacy and must meet minimum sanitary and hygiene standards, taking into account climatic conditions and, in particular, living space, air volume, lighting, heating sources, and ventilation.

Furthermore, order within penitentiaries must be maintained by complying with requirements of security, safety, and discipline, while simultaneously ensuring living conditions that respect the human dignity of prisoners. This requires providing a comprehensive and balanced program of activities, tailored to the applicable regime of execution, enabling prisoners to spend each day outside their cells for a period sufficient to ensure adequate human and social contact. Special attention must be given to individuals who have suffered physical, mental, or sexual violence (Article 49).

When searches are conducted, staff must be trained to carry out such measures in a manner that detects and prevents any attempt at escape or contraband, while respecting the dignity and personal belongings of prisoners. The Recommendation specifies that persons subjected to searches must not be humiliated by the procedure, which must be conducted only by staff members of the same sex. Prison personnel are prohibited from conducting searches involving bodily cavities; such intimate examinations may be performed solely by medical professionals (Article 54).

These provisions are reiterated in the Recommendation of the Committee of Ministers to member states on the European Prison Rules, REC(2006)2, adopted on 11 January 2006 at the 952nd meeting of the Ministers’ Deputies, representing the

principal European regulatory framework governing the execution of custodial sentences.

Respect for human dignity is most critically required in the design and organization of detention spaces, particularly those intended for overnight accommodation. Such spaces must respect human dignity and privacy and meet minimum sanitary and hygiene standards, taking into account climatic conditions and, in particular, living space, air volume, lighting, heating, and ventilation. A well-designed penitentiary or juvenile detention center must provide positive and individualized conditions for persons in custody, ensuring respect for their dignity and privacy; all rooms must be adequately furnished, have access to natural light, and be properly ventilated.

## **2.2. Protection of the human dignity of prisoners under Romanian criminal enforcement law**

Criminal enforcement law, an autonomous branch of criminal law, governs the manner in which criminal sanctions imposed by final judgments are carried out. Beyond the technical aspects related to enforcement regimes, a fundamental principle that must guide all measures adopted in this field is the respect for human dignity. This constitutes not merely a moral ideal, but a legal requirement expressly provided for in the Constitution of Romania as well as in the international treaties to which Romania is a party, as previously noted.

Thus, human dignity is elevated to the rank of a guiding principle within Romanian criminal enforcement legislation, as the entire regulatory framework is grounded in the fundamental interests of the human person, the protection of the human condition, and the establishment of limits on the punitive regime applicable to antisocial acts committed by individuals.

From its very first articles regulating the principles of the execution of custodial sentences and measures, Law No. 254/2013 stipulates that “penalties and custodial measures shall be executed in conditions that ensure respect for human dignity” (Article 4). Moreover, Article 5 of the same law expressly prohibits subjecting any person serving a sentence or custodial measure to ill-treatment, torture, or inhuman or degrading treatment.

Primarily, the dignity of persons deprived of liberty relates to accommodation conditions, which must be ensured in spaces that respect this principle, taking into account climatic conditions and, in particular, living space, air volume, lighting, heating sources, and ventilation.

Article 1 of the Order of the Minister of Justice No. 433/2010 approving the Minimum Mandatory Standards on the Accommodation of Persons Deprived of Liberty establishes that facilities intended for the accommodation of persons deprived of liberty must respect human dignity and meet minimum sanitary and hygiene standards. Accordingly, attention must be paid to climatic conditions, but especially to living space, air volume, lighting, heating, and ventilation. Both living quarters and other rooms must benefit from natural light and be equipped with systems ensuring artificial lighting, sanitary utilities, and heating installations. Existing detention facilities must ensure at least 4 m<sup>2</sup>

per person for inmates in closed or maximum-security regimes, and at least 6 m<sup>3</sup> of air per person in semi-open or open regimes. Minors, young persons, pre-trial detainees, and persons for whom the enforcement regime has not yet been established are subject to the same 4 m<sup>2</sup> requirement.

National courts have likewise recognized the importance of dignity. For instance, in Decision No. 136/2015, the Constitutional Court of Romania held that “degrading treatment applied to persons deprived of liberty contravenes the international obligations assumed by the state.” In criminal judicial practice, reparatory measures have been ordered in the form of sentence reductions for inadequate detention conditions, pursuant to Article 55<sup>1</sup> of Law No. 254/2013, introduced by Government Emergency Ordinance No. 13/2017.

Equally significant is the right of persons deprived of liberty to access medical treatment and receive healthcare at a level comparable to that which the state undertakes to provide to the general population. Although case law affords a degree of flexibility in defining the required level of medical assistance, it is consistently held that such care must be “compatible with the human dignity” of a person deprived of liberty while also accounting for “the practical requirements of detention.”

Respect for dignity, however, is not limited to material conditions; it also involves treating the inmate as a person capable of rehabilitation. The state is obliged to provide educational programs, occupational activities, and psychological support. According to Article 10(1) of Law No. 254/2013, “the execution of custodial sentences aims to ensure public order and to prevent the commission of new offences through the re-education of convicted persons.”

Other provisions in the special law also concern the protection of human dignity. For example, inmates have the right to wear civilian clothing; if they do not possess appropriate attire, the penitentiary must provide it in order to preserve the dignity of the individual.

### **3. Violation of Human Dignity – A Concise Examination of the Case-Law of the European Court of Human Rights**

The European Convention on Human Rights contains no specific provisions concerning individuals serving custodial sentences. Nonetheless, the case-law of the European Court of Human Rights has consistently emphasized that the State must ensure conditions compatible with respect for human dignity for any person deprived of liberty, so that the execution of the sentence does not subject the individual to suffering exceeding the level inherent in detention.

Romania has been found in violation of Article 3 of the Convention in numerous cases, both with regard to detention conditions and with respect to the medical care afforded to prisoners. Likewise, in *Muršić v. Croatia* (2016), the Court reaffirmed that deprivation of liberty, although entailing restrictions on freedom, cannot undermine the essence of human rights and, implicitly, human dignity.

For treatment to be considered “degrading,” it must humiliate or debase the individual, showing a lack of respect for—or diminishing—his or her human dignity. It is

sufficient that the victim perceives the treatment as humiliating, even if others do not share this perception. While the intention to humiliate is a relevant factor, the absence of such intent does not rule out a finding of a violation of Article 3 (*Gäfgen v. Germany* [GC], 2010; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004). A punishment considered “degrading” and thus in breach of Article 3 must reach a certain level of humiliation and debasement, an assessment that is inevitably relative and dependent on all the circumstances of the case, particularly the nature of the punishment, the context in which it was imposed, and the manner of its execution (*Tyrer v. the United Kingdom*, 1978).

Most violations found against Romania concern overcrowded prisons, resulting in detainees being allocated living space below the minimum standards set by international regulations and by the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

The Court has observed in this line of cases that even in the absence of any intention by the authorities to humiliate or debase the applicants, this does not in itself exclude a finding of a breach of Article 3. It has therefore held that the conditions of detention—extremely limited personal space, often below 4 m<sup>2</sup>; insufficient opportunities for daily outdoor exercise; restricted access to showers; lack of constant hot water; inadequate toilet access and privacy; poor ventilation; insufficient natural light; deplorable hygiene; absence of a separate dining area—constituted treatment of a severity exceeding the unavoidable level of suffering inherent in detention, amounting to degrading treatment in violation of Article 3 of the Convention.

Romania is not the only State facing persistent overcrowding in its prison system. The Court has issued several landmark judgments calling upon States to adopt measures aimed at improving detention conditions. By way of example: *Vasilescu v. Belgium* (2014), *J.M.B. and Others v. France* (2020), *Samaras and Others v. Greece* (2012), *Tzamalīs and Others v. Greece* (2012), *Al. K. v. Greece* (2014), *Iacov Stanciu v. Romania* (2012), *Mandić and Jović v. Slovenia* (2011), *Štrucl and Others v. Slovenia* (2011), *Shishanov v. Moldova* (2015), and *Petrescu v. Portugal* (2019).

Despite certain reforms adopted by the respondent States, in many cases these measures have proven insufficient to remedy systemic problems and to ensure detention conditions that do not infringe the dignity of persons deprived of liberty. Consequently, the European Court has issued pilot judgments in this area against several States: Bulgaria (*Neshkov and Others v. Bulgaria*, 2015), Hungary (*Varga and Others v. Hungary*, 2015), Italy (*Torreggiani and Others v. Italy*, 2013), Poland (*Orchowski v. Poland*, 2009; *Norbert Sikorski v. Poland*, 2009), Russia (*Ananyev and Others v. Russia*, 2012), Romania (*Rezmiveş and Others v. Romania*, 2017), and Ukraine (*Sukachov v. Ukraine*, 2020).

Through these judgments, the Court reaffirmed that Article 3 requires States to ensure that any prisoner is held in conditions compatible with respect for human dignity and that, given the particularities of the prison environment, the individual’s health and well-being are adequately protected.

For detention to fall under Article 3, the suffering or humiliation involved must go beyond the inevitable level inherent in the deprivation of liberty. Thus, the State must ensure that a person is detained in conditions compatible with respect for human

dignity, meaning that the manner of executing the custodial sentence must not subject the detainee to distress or hardship of an intensity exceeding the unavoidable level inherent in detention (*Neshkov and Others v. Bulgaria*, 2015; *Muršić v. Croatia*, 2016).

In additional judgments, the Court has stressed the obligation to protect human dignity in the prison environment by sanctioning the absence of measures preventing its violation. The Court has held, for example, that keeping individuals handcuffed in unnatural positions (kneeling, lying down, etc.) after immobilization is prohibited, as is exposing detainees in handcuffs in public areas or police premises to be filmed or photographed by the media.

In *Bouyid v. Belgium* [GC], 2015, the Court held that whenever a person is deprived of liberty or confronted with law-enforcement authorities, any conduct by those authorities that diminishes the individual's human dignity constitutes a violation of Article 3.

Moreover, access to adequately equipped sanitary and hygiene facilities is essential for maintaining inmates' sense of personal dignity, as hygiene and cleanliness are not only aspects of self-respect and respect for fellow inmates but are fundamental to preserving health. A truly humane environment is impossible without immediate access to a toilet or the ability to maintain one's body clean (*Ananyev and Others v. Russia*, 2012). Violations of dignity have also been found where detainees lacked privacy when using the toilet, being constantly visible to other inmates lying on their beds or to prison staff watching through inspection windows (e.g., *Aleksandr Makarov v. Russia*, 2009; *Longin v. Croatia*, 2012).

In *Vasilescu v. Belgium* (2014), the Court reiterated that deprivation of liberty does not justify a lack of access to activities designed to prepare inmates for social reintegration. In the same spirit, the European Committee for the Prevention of Torture (CPT) recommends that detention be organized around activity and social interaction, rather than isolation or repression.

#### **4. Final Considerations**

The dignity of the human person is not merely a fundamental right in itself but constitutes the very foundation of all fundamental rights. All the more so, the execution of any sentence—and especially of custodial sentences—must be centered around the respect for the dignity of the convicted person. The fact that an individual has committed an offence and is subjected to a sanction does not extinguish his or her fundamental rights; rather, it imposes an even greater responsibility upon the State. Only an enforcement system grounded in respect for the human being, oriented towards re-education and reintegration, can serve the needs of a genuinely democratic society.

The Court of Justice of the European Union has also affirmed, in its judgment of 9 October 2001 in Case C-377/98, *Netherlands v. Parliament and Council*, paras. 70–77, that the fundamental right to human dignity forms part of Union law, thereby once again underscoring its paramount importance.

The European Court of Human Rights has consistently held in its case-law that any

interference with human dignity strikes at the very essence of the Convention. Consequently, any conduct by state agents entrusted with the enforcement of the law—particularly when directed at persons in their custody and deprived of liberty—that diminishes human dignity constitutes a violation of Article 3 of the Convention.

Likewise, the Court has held that States are under a positive obligation to organize their penitentiary systems in such a way as to ensure respect for the dignity of persons deprived of liberty, irrespective of any financial or logistical difficulties (*Muršić v. Croatia* [GC], 2016; *Neshkov and Others v. Bulgaria*, 2015).

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