# 2020-2026 Supplement:

## Dignity Law:

## Global Recognition, Cases and Perspectives (Hein 2020)

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**Developments in Dignity Law, 2020-2026**

This supplement summarizes case developments in dignity law since we published DIGNITY LAW: GLOBAL RECOGNITION, CASES AND PERSPECTIVES (Hein 2020). These case summaries with hyperlinks to original cases show the development of dignity law in the last few years; what we see is an expansion of dignity concepts to new areas of law, and a deepening of attention to dignity in more established areas of law.

No question that dignity plays an impactful role in jurisprudence across the globe, with potential for more when taken seriously, as the American Bar Association said, as the foundation for the just rule of law.

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We hope you enjoy this update. Please feel free to share any feedback to edaly@widener.edu and james.may@washburn.edu.

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8. In keeping with the approach in *Gwanda v. Malawi*, the High Court of Malawi issued a similar decision in 2022. In ***State v. Banda*** (2022)**,** Link, the Court held that arresting people who are homeless for vagrancy violates the right to dignity protected by Section 19 of the Malawi Constitution, among other rights: "To presume that a person is guilty because he or she appears to be without means is a violation of a person's right to dignity." Further, the police's conduct in coercing the applicants to plead guilty and threatening them with detention "caused the Applicants unnecessary distress and violated their rights to dignity and freedom from cruel, inhuman and degrading treatment … [and] the right to a fair trial[.]" The Court then ordered the police to develop proper guidelines for sweeping exercises that ensure the full protection of human rights. "[P]olice [must] fully comply with the respect for human rights and the rule of law and … take appropriate measures to ensure that police services respect the dignity inherent in the individual in the discharge of their duties."

9. Without a specific dignity right in the European Convention on Human Rights, the European Court of Human Rights relied on the dignity implications of the right to private life protected in Article 8. The Court held that a blanket ban on begging interferes with the ability to alleviate poverty and compromises dignity in violation of "private life" protected by Article 8 of the ECHR: "The Court takes the view that a person's dignity is severely compromised if he or she does not have sufficient means of subsistence … By the act of begging, the person concerned is adopting a particular way of life with the aim of rising above an inhumane and precarious situation." The Court reasoned that punishing individuals for begging when they lack alternative means of survival "diminishe[s] … human dignity and impair[s] the very essence of the rights protected by Article 8 of the Convention." ***Lacatus v. Switzerland*** (2021)**,** Link.

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**TU and RE v. Google LLC** (2022), European Court of Justice, Link

The Court ordered removal of links from Google's search results to false information about a person that had a detrimental effect on dignity and personal life: "Untrue information not only infringes the fundamental right of the person concerned to protection of personal data but also ultimately affects his or her dignity in that it puts forward a false representation of him or her, thus altering his or her identity. … In cyberspace, the dissemination of false information about someone is a permanent disfigurement of his or her identity which, nowadays, is defined above all on the web, and a serious offence against his or her dignity."

**9 ObA 120/19s** (2020), Supreme Court of Austria, Link

The Court held unconstitutional an employer's secret use of GPS tracking devices in the employee's company car, also permitted to use for personal reasons: "By using the GPS positioning system in the plaintiff's company vehicle during his working hours (and leisure time), the defendant unlawfully and culpably (intentionally) encroached on the plaintiff's private sphere, namely his very personal sphere of life[,]" causing a significant and unlawful intrusion on his dignity.

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Insert at p. 131, at the end of Discussion Point 3

Consider ***Y.P. v. Russia*** (2022), Link, where the European Court of Human Rights held that a nonconsensual sterilization procedure conducted during an emergency Caesarean section was potentially "incompatible with the requirement of respect for human freedom and dignity" in violation of Articles 3 (right to privacy) and 8 (right to private and family life) of the ECHR, but ultimately held there was no violation because the decision was made to prevent immediate risk to the woman's life.

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Insert at p. 139, before last paragraph in Section B

In many countries, the right to life enshrined in the constitution includes the right to live with dignity. The High Court of Kenya explained how this principle applies in the context of abortion. In ***PAK v. Attorney General*** (2021), Link, the Court invoked dignity in finding that the criminalization of abortion violates a woman's right to life: "The right to life … incorporates the right to dignity. So the rights to human dignity and life are entwined. The right to life is more than existence, it is a right to be treated as a human being with dignity: without dignity, human life is substantially dismissed. Without life, there cannot be dignity." The Court observed that abortion care is a fundamental right under international law: "Discrimination against women in the area of health and safety and denial of their right to control their own bodies severely violate their human dignity, which, along with equality, is recognized in the Universal Declaration of Human Rights as the foundation of freedom, justice and peace in the world." Thus, the court ruled, that the government has an obligation to take appropriate measures to ensure the enjoyment of the right to life with dignity, including the access to health care, access to medical examination and treatments.

When dignity law is incorporated into reproductive rights, courts have recognized a much broader range of interests that are implicated in the decision to terminate a pregnancy, precisely because the decision implicates so many core aspects of a person's life. In a case against El Salvador, the Inter-American Court considered women's reproductive health as one aspect of the right to health, which has not only physical dimensions but mental, moral, and social dimensions as well. See ***Manuela v. El Salvador*** (2021), Link, where the Inter-American Court of Human Rights struck a law that criminalized abortion, finding it ignores the dignity-based notion that "any person is

capable of self-determination and possesses moral awareness." Further, the Court noted that "the right to health means that everyone must enjoy the highest level of physical, mental and social well-being, to live with dignity." The Court then ordered the State to develop a comprehensive sexual education and reproductive health program in its educational institutions.

These multiple dimensions of dignity are evident in constitutional jurisprudence as well. In ***Amparo Under Review 267/2023*** (2023), Link, the Mexican Supreme Court of Justice held that imposing criminal and civil sanctions against those seeking or providing abortion services before 12 weeks violates the constitutional right to dignity. The Court's reasoning centered around the concept of dignity:

> "Women and people with the capacity to gestate can freely use their bodies and can develop their identities and their destinies autonomously, free of obstacles, which is part of recognizing the elements that define them and the exercise of their rights necessary for the full development of their life."
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> "Human dignity is not simply an ethical declaration but enshrines a fundamental right by which all government authority must respect and protect the dignity of every human being, understood at its core, as the inherent interest of every person, just by virtue of being a person, to be treated as a human being and not to be humiliated, or degraded, debased, or objectified."
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> "The right to dignity is bound up with the right to a dignified life ("vida digna") specifically in being able to build a life project, the right to decide, the free development of personality, personal autonomy and protection of privacy, and the definition of their identity and their full political, social, economic, labor, sexual, reproductive and cultural individuality."
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> "If women with unwanted pregnancies are forced to carry their pregnancies to term, the state would be stripping them of the right to determine the immediate and long-term path their lives would take. Depriving women of autonomy not only over their bodies but also over their lives would be an affront to their dignity."

The Court even held that regulations that impose reason-based limitations on the right to terminate a pregnancy unconstitutionally violate dignity rights by paternalistically limiting the decisional autonomy of women.

> Therefore, in order to annul the right to decide, there is no room for a paternalistic position that supports the idea that women or people with the capacity to bear children need to be "protected" from making certain decisions about their life plan or their sexual and reproductive health, since this approach entails a disregard for the fact that they are rational beings. individual and autonomous, fully aware of the decisions that – according to their life project – are the ones they consider most convenient.

Like Mexico, India has also emphatically reaffirmed dignity-based reproductive rights in recent years. In ***X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr.*** (2022), Link, the Supreme Court of India upheld reproductive rights for women in 2022.

> "The right to dignity encapsulates the right of every individual to be treated as a self-governing entity having intrinsic value. It means that every human being

> possesses dignity merely by being a human, and can make self-defining and self-determining choices. Dignity has been recognized as a core component of the right to life and liberty under Article 21."
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> "[D]ignity forms a part of the basic structure of the Constitution. Such is its fundamental value in our legal system - the concept of dignity forms the very foundation to the Constitution and the rights enshrined in it. Dignity inheres in every individual and is an inalienable aspect of one's humanity" (citing Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225).
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> "In the context of abortion, the right to dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the state. The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women."

*See also* ***ABC v. State of Maharashtra*** (2023), Bombay High Court (India), Link, finding that a government medical board denial of the petitioner's request to terminate pregnancy at 32 weeks because of the discovery of serious fetal abnormalities contravened constitutional values to reproductive autonomy, equality, privacy, and the "right to live a dignified life."

All of these cases lie in stark contrast to the United States, where abortion rights are neither considered to have anything to do with human dignity nor protected under the federal constitution, after ***Dobbs v. Jackson Women's Health Org.*** (2022), Link. In that case, the U.S. Supreme Court overturned 50 years of modest reproductive rights protection under not the life but the liberty portion of the Due Process Clause of the 5th and 14th amendments, explicitly overruling *Roe v. Wade,* 410 U.S. 113 (1973), and most of *Planned Parenthood of Eastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), including the portions in the main text. The *Dobbs* Court did not address whether women have dignity or dignity rights, although the dissenting opinion did. Justices Breyer, Sotomayor and Kagan emphasized that the Court has recognized the right to personal autonomy in cases related to marriage, procreation, contraception, family relationships, child rearing, and education. The dissent argued that dignity and self-determination are central to these cases and that "today's decision strips women of agency over what even the majority agrees is a contested and contestable moral issue. It forces her to carry out the State's will, whatever the circumstances and whatever the harm it will wreak on her and her family. In the Fourteenth Amendment's terms, it takes away her liberty."

Insert at p. 160 after Discussion Point 7

8. Numerous constitutional courts have invalidated prohibitions on assisted suicide finding that a person's decision to end their life is an act of dignity that must, under the constitution, be respected. In ***Case of Ana Estrada*** (2022), Link, the Supreme Court of Peru invalidated as unconstitutional Peru's criminalization of voluntary assisted suicide for the terminally ill, concluding that: "The right to life is not, cannot be, mere survival; it is, fundamentally, choice, project, decision, autonomy, and it is even in the most dramatic moments of it…. The same right that supports the freedom to live or to live with freedom, supports the right to end it, if life lacks dignity, to die when life is still worthy or not to go through a situation of indignity that inevitably leads to death." The Court reasoned that "[i]t must be considered that the right to a dignified death, without being a fundamental right, gives rise to a legitimate exception, of non-punishment, under certain conditions, of the state protection of life."

The Constitutional Court of Colombia has ruled the same way in a pair of cases from 2021 and 2022. In ***C-233/21*** (2021), Link, the Court invalidated as unconstitutional the criminalization of physician-assisted euthanasia. "[W]ithin the framework of respect for human dignity, a person cannot be forced to continue living when he suffers from a serious and incurable illness that causes him intense suffering and has adopted the autonomous decision to end his existence..." The ruling recognizes the individual's right to make autonomous decisions about their life, particularly when facing terminal illness: "[T]he right to life cannot be reduced to mere biological subsistence, but rather implies the possibility of living adequately in conditions of dignity." The following year, in ***C-164/22*** (2022), Link, the Court invalidated as unconstitutional Colombia's criminalization of medically-assisted suicide: "The right to live with dignity is a fundamental and autonomous right … which is composed of two basic dimensions: On the one hand, human dignity as an essential presupposition of the human being … On the other hand, the guarantee of personal autonomy …." The Court reasoned that a "[d]ignified death seeks to guarantee that after a sensible and informed exercise of decision-making, the person can choose to stop living a life with intense suffering and pain. … '[T]he State cannot oppose the decision of the individual who does not want to continue living and who asks for help to die, when he suffers from an illness that causes him unbearable pain, incompatible with his idea of dignity.'"

However, the situation in France is different. In ***Decision No. 2022-1022 QPC*** (2022), Link, the French Constitutional Council upheld the legal authority of physicians to disregard a patient's advance directives they deemed "manifestly inappropriate or not in accordance with the medical situation," over objections that such capacity infringed upon fundamental rights to dignity and other rights, reasoning that the law "ensure[s] that the dignity of persons at the end of their lives is safeguarded." France is unique in the world in embracing an objective standard of dignity that can, at times, override a person's assertion of their own will. See, e.g., Wackenheim v. France, Human Rights Committee (2002).

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Consider these additional cases.

**1 BvR 110/22** (2022), Federal Constitutional Court of Germany, Link

The Court held that heirs cannot seek recompense for diminution of dignity of the deceased, here the widow and sole heir of former German Chancellor Helmut Kohl for attributions in a book about him after he died. The court reasoned that while the Basic Law guarantees protection of human dignity even after death, the postmortem protection of dignity does not automatically translate into specific legal claims against infringements by private individuals: "the duty of protection arising from the guarantee of human dignity does not require the provision of a specific sanction for violations of dignity. In particular, there is no constitutional principle to the effect that a violation of human dignity must always give rise to a claim for compensation." The court rejected the compensatory claim on the basis that the guarantee of human dignity "[d]oes not entail any obligation on the part of the civil courts to extend civil law basis for claims under the system of sanctions under the personality rights."

**Simon v. State of Tamil Nadu** (2021), Madras High Court (India), Link

The Court held that "the right to accord a decent burial or cremation of a dead body should be taken to be part of the right to such human dignity[,]" and "the right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also his body after his death." The High Court agreed with both claims and held that "the right of the family of a Covid-19 victim to perform the last rites before the cremation/burial of the deceased person is a right akin to Fundamental Right within the meaning of Article 21 of the Constitution of India." The court affirmed that "[t]he right to human dignity is not restricted to living human being but is available even after death."

**King N.O. v. De Jager** (2021), Constitutional Court of South Africa, Link

The Court deemed portions of a private will that granted inheritances to family farms solely to male heirs could inherit family farms as violating the dignity rights of women under Section 10 of the Constitution ("everyone has inherent dignity and the right to have their dignity respected and protected"). While both the testator and the heirs possess dignity, "what the Constitution prohibits is unfair discrimination on the part of the testator when disposing of his or her property." Thus, the Court concluded that the limitation on the applicants' right to be free from unfair discrimination "cannot constitute a limitation that is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom."

**National Bank of Pakistan v. Perveen** (2020), Supreme Court of Pakistan, Link

The Court ruled that an employee's grievance against a public employer survives death that passes on to the decedent's legal heirs: "Human dignity is harmed when individuals and groups are

marginalized, ignored, or devalued…. Under our constitutional scheme, abatement of proceedings on the death of a civil servant, in a case where the cause of action carries a survivable interest, will unduly deprive the decedent civil servant, as well as his legal heirs of their constitutional rights to livelihood, property, dignity, and a fair trial." The Court reasoned that the "fundamental right to dignity ensures that the reputation of the civil servant is not sullied or discredited through wrongful dismissal, termination or reversion" and that "[a]ny slur on the reputation of a civil servant impinges on his human dignity and weighs equally on the dignity and honour of his family."

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Insert at p. 168 at the end of Discussion Point 4

In ***Motshidiemang v. Attorney General*** (2021), Link, the Court of Appeal of Botswana invalidated criminalization of consensual same-sex intimate conduct as violating the "right to dignity" under Section 3 of the Constitution of Botswana.

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Insert at p. 181, after Discussion Point 10

11. In ***Sham Tsz Kit v. Secretary for Justice*** (2023)**,** Link, the Court of Final Appeal of the Hong Kong Special Administrative Region held that the lack of legal recognition for a same-sex partnerships violates the right to privacy under Article 14 (right to private life) of the Hong Kong Bill of Rights: "[T]he absence of legal recognition of same-sex unions may result in arbitrary interference with the private life and dignity of partners in same-sex [relationships]." The Court reasoned that "[i]n the case of committed, loving, stable, long-term relationships between partners of the same sex, the absence of any legal recognition means that the partners may be confronted in the ordinary course of their daily lives with a state of affairs in which their privacy, and the dignity associated with private life, are subject to arbitrary or unlawful interference."

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Insert at p. 189 after Discussion Point 4

5. Courts have been busy with cases involving the implications of evolving conceptions of gender and sexual identity. Consider these two cases, where petitioners were able to assert expanded protections for their bodily autonomy based on established principles of dignity rights.

**Semenya v. Switzerland** (2023), European Court of Human Rights**,** Link

The Court held that requiring an athlete with hyperandrogenism to lower her testosterone levels beneath a certain threshold to compete in international athletics competitions violated "interests … related to her dignity and reputation, her bodily integrity, her private sphere, including sex characteristics, and her right to practise her profession" in violation of Articles 8 and 14 of the ECHR. Further, the Court noted, the choice between complying or not competing "had negative repercussions on her physical and psychological integrity, as well as on her dignity as a woman."

**Q v. Commissioner of Registration** (2023), Court of Final Appeal of the Hong Kong Special Administrative Region, Link

The Court held that requiring transgender individuals to undergo surgical sex reassignment before recognizing their preferred gender on their Hong Kong Identity Cards (HKID) violated the right to privacy under Article 14 of the Hong Kong Bill of Rights: "[T]he very essence of the [law] is respect for human dignity and human freedom, [and thus] the right of transgender persons to personal development and to physical and moral security is guaranteed,'" noting that its interpretation of its own Bill of Rights is "materially equivalent" to the concept of respect for private life in Article 8 of the European Convention on Human Rights. The Court reasoned that "[t]he refusal to allow an amendment to the gender marker involves, as the evidence discloses, humiliation, distress and loss of dignity in routine activities involving the inspection of their HKID cards."

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Insert at p. 210 after Discussion Point 3

4. Courts are also recognizing the constitutional and human right to dignity that is violated when a person is subjected to sexual abuse and harassment. Even if the abuse itself is not state action, courts have imposed on states both positive and negative obligations to protect survivors of abuse and to enforce the law against their abusers. See, e.g. ***C. v. Romania*** (2022), European Court of Human Rights, Link, where an employee of a state-owned railway station accused the station manager of "a series of acts designed to create discomfort in the workplace for the victim, terrorising her. He repeatedly tried to undress [the applicant] when he found her alone or in secluded places; he unbuttoned her jacket on several occasions and asked her to stay put[.]" Yet neither the victim's supervisor, the state prosecutor nor the State court found sexual harassment, citing the lack of humiliation and disregarding evidence, power dynamics, and psychological impact. On appeal to the European Court of Human Rights, the victim argued that the State's lack of action infringed the dignity incorporated by the right to "private life" guaranteed by Article 8 of the European Convention on Human Rights. The Court agreed, observing that the "authorities made no attempt to relate their findings to domestic law despite the fact that respect for dignity is a prominent feature in the legislation of the respondent State [and that the] concept of private life

… extends to dignity." See also ***Guzmán Albarracín v. Ecuador*** (2020), Inter-American Court of Human Rights, Link, finding that the state's failure both to protect a student who had survived sexual abuse and to prosecute the abuser violated the student's "rights to life, personal integrity, the protection of honor and dignity and education" afforded by the ACHR.

The Employment Appeal Tribunal of the United Kingdom held in 2023 that there could be no recovery in a case where the claimant was not aware of the gossip about them. The Tribunal said that harassment requires (1) "unwanted conduct" by one party, and (2) "that the conduct has the effect of violating [another party]'s dignity." The complaining party's perception is "a key and indeed mandatory component in determining whether or not harassment has occurred." ***Adam Greasley-Adams v. Royal Mail Group Limited*** (2023), Link

***5.*** In ***Centre for Child Law v. Director-General: Department of Home Affairs*** (2021), Link, the Constitutional Court of South Africa declared unconstitutional a law that prohibited unmarried fathers from registering their child's birth under their surname without the mother's presence or consent: "[T]he [law] is manifestly inconsistent with the best interests of the child as well as her rights to dignity and equality and her right to a name and nationality from birth…. The section sediments the long-held distinction between 'legitimate' and 'illegitimate' children in our law which is abhorrent to our constitutional values of human dignity, ubuntu and substantive equality."

6. Notice how dignity can be transformative in contexts where cultural rituals are entrenched. In ***Kamau v. Attorney General*** (2021), Link, the High Court of Kenya held that human dignity must be respected even as against entrenched cultural rituals and practices. Petitioners, Kikuyu women, challenged a national law banning female genital mutilation as violating the constitutional "right to dignity" of consenting adult women because "self-autonomy, or the ability to regulate one's affairs, even to one's own detriment, is the very essence of freedom and a vital part of dignity." The court disagreed, reasoning that the practice "inflicts harm on women and girls thereby infringing upon their worth and dignity" so that "limiting this right is reasonable in an open and democratic society based on the dignity of women." Is the Court being respectful of women's autonomy or (ironically) paternalistic in protecting them from their assertions of autonomy?

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Insert at p. 217, after Discussion Point 5

6. In 2022, the Supreme Court of Pakistan invalidated convictions based on illegal display of Islamic symbols by non-Muslims, upholding the right to engage in private religious practices, in part based on constitutional protections of dignity: "Article 14 of the Constitution guarantees right to dignity to every person. … To deprive a non-Muslim (minority) of our country from holding his religious beliefs, to obstruct him from professing and practicing his religion within the four walls of his place of worship is against the grain of our democratic Constitution and repugnant to the spirit and character of our Islamic Republic. It also deeply bruises and disfigures human dignity and the right to privacy of a non-Muslim minority, who like all other citizens of this country enjoy

the same rights and protections under the Constitution." The Court continued: "Bigoted behaviour towards our minorities paints the entire nation in poor colour, labelling us as intolerant, dogmatic and rigid. It is time to embrace our constitutional values and live up to our rich Islamic teachings and traditions of equality and tolerance." ***Naqash v State*** **(**2022), Link.

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Insert at p. 229, before the Discussion Points

Consider these recent cases addressing similar issues. In each of these cases, the courts relied not only on equality principles, but on dignity principles. Consider what the attention to human dignity adds to the courts' analysis.

**Akshat Baldwa & Others v. Yash Raj Films & Others** (2023), Delhi High Court (India), Link

Invoking dignity, the Court ordered film producers to prepare an audio description for the film for visually-impaired persons, as well as subtitles and captions in both English and Hindi for those that are hard of hearing: "The rights that are guaranteed to differently-abled persons … are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty."

**Blind SA v. Minister of Trade, Industry and Competition** (2022), Constitutional Court of South Africa, Link

The Court held that requiring consent from copyright owners prior to making literary works available to the differently abled (including students) violated human dignity guaranteed by Section 10 of the Constitution of South Africa: "equality, human dignity, basic and further education, freedom of expression, and participation in the cultural life of one's choice." Thus, "[t]he requirement of authorisation thus infringes the right to dignity in section 10 of the Constitution."

**Jivan v. Romania** (2022), European Court of Human Rights, Link

The Court held that the government's denial of a personal assistant for an 88-year-old immobile amputee with various other health issues, violated Article 8 of the ECHR: "[T]he very essence of the Convention was respect for human dignity." The Court reasoned that "[t]he domestic authorities were thus called to make assessments which impacted on the applicant's personal autonomy and dignity, and thus on his enjoyment of his right to respect for private life as guaranteed under Article 8 § 1 of the Convention" and that "the applicant's right to autonomy and respect for his dignity do not seem to have been taken into account in the domestic assessments in question."

**Ubaidullah v. Government of Punjab** (2020), Supreme Court of Pakistan, Link

The Court held that denial of a teaching position to someone otherwise qualified for the State's 2 percent "disability quota" violated their constitutionally protected dignity: "'The purpose of the constitutional right to human dignity is to realize the constitutional value of human dignity; to realize a person's humanity; his free will; the freedom to shape his life and fulfill himself. It is a person's freedom to write his life story.' Such vibrancy and vitality is the hallmark of a living constitution in a democracy."

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Insert at p. 230 after Discussion Point 7

8. In ***The Matter Of Centre For Human Rights And Others v. United Republic Of Tanzania*** (2025), Link, the African Court of Human and Peoples' Rights considered how discrimination against people with albinism (PWA) affects their ability to live with dignity, which is protected under Article 5 of the African Charter of Human and Peoples' Rights. The Court held Tanzania responsible for failing to protect people with albinism from the horrific discrimination and violence done to them by others.

> Recalling its jurisprudence, the Court reiterates that three main factors are relevant in determining whether the freedom from torture, cruel, inhuman and degrading treatment has been violated. Firstly, it is clear that, Article 5 of the Charter is absolute as it has no limitation clauses. Secondly, the prohibition in Article 5 of the Charter is to be interpreted so as to provide the widest possible protection against abuse be it physical or mental. Lastly, personal suffering and indignity can take various forms and assessment must always depend on the circumstances of each case.
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> With regards to Article 5 of the Charter being absolute, the Court notes that there is no evidence that the Respondent State has enacted any laws or policies to limit the rights under Article 5 of the Charter.
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> In relation to Article 5 of the Charter being given the widest possible interpretation, the Court notes that torture, and inhuman or degrading treatment can result from either State actions or omissions. …
>
> The Court has also previously held in its jurisprudence related to human dignity, that indignity can take various forms and assessment will depend on the circumstances of each case.
>
> The Court recalls the Commission's decision in *The Nubian Community in Kenya v. The Republic of Kenya* that, the respect of the dignity inherent in the human person informs the content of all the personal rights protected in the Charter.

The Court notes that the Commission further considered the notion of human dignity in *Purohit v. The Gambia*, where it took the view that human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities as the case may be, are entitled to without discrimination. The Commission thus considered that human dignity is a right which every human being is obliged to respect by all means possible and confers a duty on every human being to respect this right.

The Court observes that the alleged violation of the right to dignity of PWA is linked to evidence tendered on the treatment of PWA within the Respondent State. This relates to PWA being treated as commodities awaiting harvest and sale of body parts, occasioning brutal and severe attacks upon their person, in violation of their right to equal worth as human beings.

Furthermore, the Court notes from the record that the thriving and lucrative commodity trade has led to desecration of graves and grave robbery for body parts. This has created a climate of fear where PWA are incapable of enjoying their rights and freedoms and perceive their life as devalued vis-a-vis persons without albinism.

The Court also notes the submission by the Applicants as detailed above that PWA face assault from private parties in society motivated by beliefs in witchcraft and myth that undermine the equal enjoyment of human rights and freedoms of PWA in society.

The Court observes that the beliefs, which are prevalent in the Respondent State, lead to credible manifestations of harm suffered by PWA who are hunted for their body parts and even suffer ritual killing. In the Court's view, such actions against PWA without concerted efforts to prosecute and punish offenders, leave an indelible mark on their right to dignity and cause them to feel ostracized from the society.

Importantly, the Court observes that whilst such attacks and the climate of fear they create constitute violations of PWA right to dignity under Article 5 of the Charter, in order for such violations to be attributable to the Respondent State, the latter must have failed to perform due diligence by failing to take necessary steps to prevent the violation or provide the victims with reparations.

In this regard, the Court notes its earlier finding that the Respondent State has failed to exercise due diligence in preventing attacks, investigating them as well as prosecuting offenders and sentencing them accordingly.

In light of the foregoing, the Court finds that the Respondent State violated Article 5 of the Charter by failure to take necessary steps to prevent the violation of the rights of PWA.

E. Discrimination on the basis of gender and sexual identity

There have been numerous cases in recent years about hate speech, where freedom of speech and equality values often clash. When courts consider the impacts on the dignity of those who are targeted by hate speech, they often find a basis for limiting freedom of speech. Below are several examples.

In ***Qwelane v. South African Human Rights Commission*** (2021), Link, the Constitutional Court of South Africa upheld prosecution of a claim of hate speech directed at members of the LGBTQ+ community. Central to the issue before the Court was the "delicate balancing exercise between the fundamental rights to freedom of expression, dignity and equality." The Court emphasized the destructive nature of hate speech and its ability to undermine human dignity and social cohesion. "Hate speech is one of the most devastating modes of subverting the dignity and self-worth of human beings." Additionally, the Court emphasized that while the rights to equality and dignity are self-standing rights, "equality is inextricably linked to dignity. At the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups."

The European Court of Human Rights also takes this approach. In ***Beizaras and Levickas v. Lithuania*** **(**2020), Link, the Court held that the government's failure to initiate a pre-trial investigation concerning hate speech directed at a same-sex couple infringed their dignity under domestic constitutional law, namely, Article 21 of the Constitution of Lithuania, which provides: "'Human dignity shall be protected by law. It shall be prohibited to torture or injure a human being, degrade his dignity, subject him to cruel treatment, or to establish such punishments[.]'" The Court reasoned: "When interpreting those constitutional provisions, the Constitutional Court has held that dignity is an inalienable characteristic of a human, being of the greatest social value; every member of society has innate dignity; all people by nature are to be deemed equal in their dignity and rights. Human dignity should be regarded as constituting a special constitutional value. Dignity is characteristic of every human being, irrespective of how he/she assesses himself/herself or other people assess him/her. The Constitution establishes the State's duty to ensure the protection and defence of human dignity. State institutions and officials have the duty to respect human dignity as a special value[.]" Thus, the Court found that the comments on the applicant's social media page impacted their dignity, and the State of Lithuania violated Article 14 because it failed to fulfil its positive obligation to respect the applicants' rights to respect for private life under Article 8 of the ECHR.

The following year, the Court in ***Association Accept and Others v. Romania*** (2021), Link, held that police officers had failed to meet obligations of Articles 8 and 14 of the ECHR to protect members of the LGBTQ+ community in Romania against harassment and hate speech at the screening of a movie portraying a same-sex family: "[T]he Court considers that the treatment complained of affected the individual applicants' psychological well-being and dignity, thus falling within the sphere of their private life." The Court reasoned that "the authorities failed to … respond adequately in order to protect the individual applicants' dignity against homophobic attacks by a third party."

And in 2023, the Court held in ***Nepomnyashchiy and Others v. Russia*** (2023)**,** Link, that statements by a public official calling for violence against members of the LGBTQ+ community

in a criminal proceeding "were highly offensive for the dignity of LGBTI people" thus adversely "affecting her right to human dignity to respect for private life and to freedom from discrimination" in violation of the Russian Constitution guarantee of "the right to human dignity," as well as Articles 8 and 14 of the ECHR.

The United States seems to be the outlier, privileging freedom of speech over the dignity interests of members of targeted communities. In ***303 Creative LLC v. Elenis*** (2023), Link, the U.S. Supreme Court held that a state anti-discrimination law violated free speech protections of the U.S. Constitution by prohibiting a graphic designer from declining to create websites celebrating same-sex marriages (even though no one had asked her to do so), based on her religious beliefs. While recognizing that public accommodations laws "vindicate the deprivation of personal dignity that surely accompanies denials of equal access to public establishments," the Court reasoned that "taken seriously, that principle would allow the government to force all manner of artists, speechwriters, and others whose services involve speech to speak what they do not believe on pain of penalty," and that "no public accommodations law is immune from the demands of the Constitution." In reviewing the arc of anti-discrimination "public accommodation" jurisprudence, the Court observed that while "there is much to applaud here … none of [it] answers the question we face today: Can a State force someone who provides her own expressive services to abandon her conscience and speak its preferred message instead?"

The dissent would have elevated dignity in the discussion: "Public accommodations law ensures *equal dignity* in the common market. Indeed, that is the law's "fundamental object": "to vindicate 'the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.'" The dissent noted, "if you have ever taken advantage of a public business without being denied service because of who you are, then you have come to enjoy the dignity and freedom that this principle protects [and that] lesbian, gay, bisexual, and transgender (LGBT) people, no less than anyone else, deserve that dignity and freedom." "The truth is," the dissent noted, "these affronts and denials are intensely human and personal. Sometimes they may harm the physical body, but always they strike at the root of the human spirit, at the very core of human dignity."

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Insert at p. 251 after Discussion Point 4

5. In ***Musembi v. Moi Educational Centre*** (2021), Link, the Supreme Court of Kenya held that forced evictions from housing "constituted a violation of fundamental rights and freedoms and an abuse of inherent human rights and dignity … including, but not limited to, the right to the highest attainable standards of health and healthcare services, accessible and adequate housing, freedom from hunger and to adequate food, clean and safe water, social security and education. The Court reasoned that "[t]he eviction of the Petitioners had been violent and had not accorded with the expected constitutional obligation of the State to ensure that those in informal settlements were treated with the dignity that was conferred on them by art 28 of the Constitution."

Insert at p. 256 after Discussion Point 3

4. In ***Francisco Javier Rincon Riaño v. Capital Healthcare Institution*** (2021), Link, the Constitutional Court of Colombia imposed on the government the affirmative obligation to provide access to a wheelchair and medical supplies to a shelterless person in order to protect his "fundamental right to … a dignified life." The Court reasoned that "[t]he plaintiff in the present proceeding is a street dweller, subject to special constitutional protection and that his situation is related to the timely and effective protection of his right to health and a dignified life."

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Insert at p. 276, after Discussion Point 8

9. Consider this case from the United Kingdom, ***S.S.W.P. v. A.T.*** (2022), Link, where the Upper Tribunal, a superior court of record, held that denying individual and family welfare benefits to a migrant from Romania for their 'most basic needs' violated Article 1 of the Charter of Fundamental Rights, which provides that: "Human dignity is inviolable. It must be respected and protected." The Tribunal explained that "[t]he dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. …[and] that a fundamental right to human dignity is part of Union law."

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Insert at p. 308 before Discussion Points

As environmental conditions become more dire, courts at the national, regional, and international levels are recognizing that the human right to a healthy environment is rooted in the right to live a dignified life. Here are recent cases from each jurisdictional level.

**D.G. Khan Cement Company v. Government of Punjab** (2021), Supreme Court of Pakistan, Link

The Court upheld a local zoning ordinance forbidding a cement company from expanding and thus contributing to climate change among other environmental impacts, finding that it "synchronizes well with our constitutional values, set out in the preamble of the Constitution, as well as the Fundamental Rights and the Principles of Policy, in particular, the right to life and dignity, promotion of social and economic wellbeing of the people and safeguarding the legitimate interest of backward and depressed classes."

**Advisory Opinion AO-32/25 Of May 29, 2025, Requested By The Republic Of Chile And The Republic Of Colombia on the Climate Emergency And Human Rights**, Link.

In this case, Chile and Colombia had asked the Inter-American Court of Human Rights to issue an Advisory Opinion on the obligations of states with respect to climate change. The Court did not announce a general right to dignity in the climate context but, building on extensive prior jurisprudence within and outside the environmental and climate areas, it assumed that dignity rights are fully protected under Inter-American human rights law. The Court's opinion is extensive; we quote only brief passages here to provide a sense of how the Court conceptualized dignity, along with the section headings relating to each passage.

> **The Jus Cogens Nature of the Obligation not to Cause Irreversible Damage to the Climate and the Environment**
>
> Recognition of the obligation to preserve the equilibrium of the ecosystem in the face of anthropogenic conducts that give rise to irreversible harm as a peremptory norm does not contradict current positive law. Rather, it contributes to give effect to existing norms more integrally and has achieved a degree of consolidation and universal recognition that justifies its characterization as a norm of jus cogens, owing to its essential connection to the protection of human life, dignity and inter-generational justice.
>
> **Regarding the Principle of Equality and Non-Discrimination**
>
> The concept of equality referred to in Articles 1(1) and 24 of the American Convention, 3 of the Protocol of San Salvador,1011 and II of the American Declaration springs directly from the oneness of the human species and is inseparable from the essential dignity of the individual so that it is incompatible with any notion that a given group has the right to privileged treatment because of its perceived superiority or, inversely, that considering it inferior, a group is treated with hostility or otherwise subjected to discrimination in the enjoyment of rights which are accorded to others not so categorized.
>
> **Regarding the protection of children**
>
> The Court has indicated that among the special measures for the protection of children and the rights recognized for them in Article 19 of the American Convention, the right to education figures prominently, as it increases their possibilities of enjoying a dignified life and contributes to preventing situations that are unfavorable for children and society itself.
>
> **Regarding the Freedom of Residence and Movement**
>
> The State must refrain from any conduct that could expose people in the process of displacement to considerable risks that endanger their lives, physical integrity or dignity. To that end, it is essential to design and implement strategies to prevent possible risks in the transit routes; establish temporary shelters and safe

> resettlement zones; monitor and prevent human trafficking and train the personnel responsible for providing assistance and protection to displaced persons to prevent abuse of authority and other human rights violations.… States also have an obligation to guarantee the right of persons to return voluntarily to their place of origin, provided that this is feasible and preserves the life, dignity and health of those concerned. Furthermore, States must make available to displaced persons who are relocated or return to their place of origin mechanisms to enable them to recover the land, housing, property, and other possessions they had to leave behind."

**Views of UN Human Rights Committee, concerning communication No. 3624/2019** ("Daniel Billy") (2023), United Nations Human Rights Committee, Link

The Committee rejected a migration claim by indigenous inhabitants of the Torres Strait Islands, Australia arguing that Australia's inadequate response to climate change "failed to … protect the authors' right to life with dignity" in violation of the inhabitants' rights under Article 6 (right to life) of the International Covenant on Civil and Political Rights: "[W]hile the authors attest to feelings of insecurity engendered by a loss of predictability of seasonal weather patterns, seasonal timing, tides and availability of traditional and culturally important food sources, they have not indicated that they have faced or currently face adverse impacts on their own health or a real and reasonably foreseeable risk of being exposed to a situation of physical endangerment or extreme precarity that could threaten their right to life, including their right to a life with dignity."

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Insert at p. 347, after Discussion Point 3

4. In ***NHS Trust v. X (A Child)*** (2021), Link, the High Court of Justice of the United Kingdom, Family Division, denied the petition of a 16-year-old to refuse a potentially life-saving blood transfusion on religious grounds, reasoning that although "there can be no doubt that [the child] has suffered a violation of her human dignity," the government action was justified by a "legitimate aim" of protecting a child's life until adulthood.

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Insert at p. 350 before Discussion Points

Courts in India and Pakistan have used the concept of human dignity to protect women from invasive procedures used to discredit rape survivors. See ***Zareef v. The State*** (2021)***,*** Supreme Court of Pakistan*,* Link, and ***Sr. Sephy v. CBI & Others*** (2023), Delhi High Court (India), Link, (holding that "the concept of custodial dignity of a female will include her right to live with dignity even while in police custody.").

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Insert at p. 376 after Discussion Point 8

9. Because the rule of the *Bouyid* case is based in human dignity – rather than a positive law that could be limited –, the European Court of Human Rights has applied it to migrants. In ***H.M. and Others v. Hungary*** (2022), Link, the Court held that migrants fleeing conflict in Iraq were entitled to be treated with dignity. They challenged poor confinement conditions, mistreatment, and lack of legal safeguards in Hungary as violating Article 3's prohibition of inhuman or degrading treatment. The Court focused on dignity: "Moreover, as the Court has pointed out previously, where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity… [and] [a]ny interference with human dignity strikes at the very essence of the Convention. For that reason, any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention." Turning to events, the Court held that "the detention of the applicants in the transit zone was not lawful…. Having regard to the foregoing, in particular the fact that the handcuffing and the use of leash was not imposed in connection with lawful arrest or detention, and the absence of any discernible security risk or other legitimate reason warranting the measure, the Court considers that the use of handcuffs and leash was not justified. The measures imposed on the first applicant thus diminished his human dignity and were in itself degrading. There has accordingly been a violation of Article 3 of the Convention." See also ***R.R. and R.D. v. Slovakia*** (2020), European Court of Human Rights*,* Link, where the Court held that police use of excessive force, including beatings with batons and use of electroshock weapons during a police raid of residents of Slovakia of Roma ethnicity violated Articles 3 (inhumane or degrading treatment) and 14 (racial discrimination) of the ECHR. The Court reasoned that "any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity" violates Article 3, and that "[r]acial violence is a particular affront to human dignity" that violates Article 14.

10. The High Court of New Zealand, where there is no constitutionally explicit right to dignity, has nonetheless followed suit. *In **Pere v. Attorney General*** (2022), Link, the Court held that police shooting a man in the back at close range while he lay prostrate on the ground while being taken into police custody violated Section 23(5) of the New Zealand Bill of Rights Act, which provides that "[e]veryone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person." The Court reasoned: "The right to be treated with humanity, and with respect for the inherent dignity of the person can be seen to be at the heart of all fundamental human rights…. 'The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention ….'" The Court further found that "[s]hooting somebody in custody in the absence of a justification is inconsistent with the minimum standards of detention arising from the duty to treat detainees with humanity, and with respect for their inherent dignity."

11. After noting that "human dignity is recognized as a constitutional value, and a right to maintain one's reputation is a facet of human dignity," the Delhi High Court in India held that disclosing the names of those arrested but not charged or convicted "may have the effect of stripping the person involved of his/her dignity or subjecting him/her to avoidable ignominy," in violation of Article 21 because "'the right to live includes the right to live with human dignity.'" ***Kalita v. Delhi Police*** (2020), Link.

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Insert at p. 385 after the Discussion Point

Several courts have recognized that prosecutorial ethics are directly rooted in the constitutional protection of dignity.

**2 BvR 900/22** (2023), Federal Constitutional Court of Germany, Link

The Court struck as unconstitutional a law that permitted re-opening criminal cases against those who had been acquitted previously. Barring the State from prosecuting defendants multiple times for the same crime "serves to uphold the freedom and human dignity of those concerned" because this prevents the individual "from being reduced to a mere object of the investigation of the truth" or from being prosecuted "*ad infinitum*." Thus, the proceedings that were re-opened against the petitioner were terminated.

**Rafique v. National Accountability Bureau** (2020), Supreme Court of Pakistan, Link

The Court held unconstitutional pre-arrest confinement of a prominent political figure for corruption without due process: "The present case is a classic example of trampling fundamental rights, unlawful deprivation of freedom, and liberty and the complete disregard for human dignity as guaranteed by the Constitution…. It is in the context of such highhandedness and brazen disregard for human dignity that the [NAB] has attracted ignominy and notoriety[.]" In ordering

release the Court observed that "[t]he State is obliged to ensure that every citizen is treated equally and that his life, dignity, honour and property is fully secured. … There is only one fundamental right in the Constitution of 1973, which is unconditional, inviolable and cannot be circumscribed under any circumstances. This is the dignity of man and one of the grave consequences of pre-arrest confinement, is the humiliation and disgrace resulting from such arrest, for not only the accused but also his family and persons attached to him."

**Mugesera v. Republic of Rwanda** (2020), African Court for Human and Peoples' Rights, Link

The regional human rights tribunal held that conditions imposed on a Rwandan citizen extradited from Canada during his detention and trial for genocide violated the African Charter's protection of dignity under Article 5: "The Court observes that respect for human rights as a whole is intended to protect the dignity of the human person. However, under Article 5 of the Charter, the protection of human dignity takes a specific form, namely the prohibition of treatment likely to restrict it, such as slavery, slave trade, torture and any other form of cruel, inhuman or degrading treatment. Thus, … Article 5 of the Charter 'can be interpreted as extending to the broadest possible protection against abuse, whether physical or mental.'"

In applying these principles of human dignity to this case, the Court found that "the right to dignity of the human being is incompatible with the issuance of death threats against prisoners by prison officials. In addition to these threats, the Applicant's deprivation of adequate food, limited access to a doctor and medication, non-provision of an orthopedic pillow, difficulties in communicating with family members and his lawyer, [altogether] constitute cruel, inhuman and degrading treatment under Article 5 of the Charter."

The Court rejected the applicant's requests to be released or returned to Canada to serve the remainder of his sentence, but the applicant's family received pecuniary damages and an independent medical doctor was appointed to assess his health and recommend treatment.

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Insert at p. 405 after Discussion Point 5

6. In ***Davis v. Neal*** (2023), Link, the federal district court of Delaware considered for the first time whether there is a stand-alone right to dignity under the federal Constitution. In a case brought by people who had been grossly abused while incarcerated in Delaware, the Court ultimately held that the claim was not actionable but found that: "Dignity, or respect of our fellow human beings, is an important principle underlying many constitutional rights. Because of this, the Supreme Court has routinely discussed dignity in cases where plaintiffs seek to vindicate those rights. See, e.g., Cohen v. California, 403 U.S. 15, 24 (1971) (First Amendment protections are necessary to "comport with the premise of individual dignity and choice upon which our political system rests"); Schmerber v. California, 384 U.S. 757, 767 (1966) ("The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State."); Miranda v. Arizona, 384 U.S. 436, 460 (1966) ("[T]he constitutional foundation

underlying the privilege [against self-incrimination] is the respect a government—state or federal—must accord to the dignity and integrity of its citizens."); Trop v. Dulles, 356 U.S. 86, 100 (1958) ("The basic concept underlying the Eighth Amendment is nothing less than the dignity of man."); Obergefell v. Hodges, 576 U.S. 644, 663 (2015) ("[T]hese liberties [protected by the Fourteenth Amendment] extend to certain personal choices central to individual dignity and autonomy.")." However, the Court found that, "[i]n each of these cases, the Court mentioned dignity in connection with a claim for a violation of some other recognized right and not as the right itself."

7. In contrast to the United States position, the French Constitutional Council held in ***Decision No. 2021-898 QPC*** (2021), Link, that "[i]t is … the responsibility of the competent authorities and courts to prevent and punish acts that violate the dignity of the convicted person in detention and to order compensation for the damage suffered … [and to] guarantee convicted persons the possibility of bringing before the judge conditions of detention that are contrary to the dignity of the human person, so that they can be brought to an end." The Council struck aspects of the French Criminal Code as unconstitutional as not permitting adjustment of sentences based solely on undignified custodial conditions. Because the concern for welfare of people who are incarcerated is rooted in the recognition of their inherent dignity, it applies equally to people who are detained before conviction. In ***Decision No. 2020-858/859 QPC*** (2020), Link, the Constitutional Council held that conditions and duration of pre-trial detention violated constitutionally protected human dignity: "[I]t is the responsibility of the judicial authorities as well as the administrative authorities to ensure that the deprivation of freedom of persons held in pre-trial detention is, in all circumstances, carried out with respect for the dignity of the individual." Among other things the Council noted that "[t]here is no recourse before the judicial authority to obtain an end to the violation of the person's dignity resulting from their conditions of pre-trial detention." This decision represents a significant victory for the protection of detainees' rights in France, for the Council emphasized the importance of safeguarding individual dignity during pre-trial detention and strongly advocated for legislative action to ensure detainees have effective legal remedies to address undignified conditions.

By contrast the Eighth Amendment to the United States Constitution only prevents "punishment" from being cruel and unusual; government treatment of a person who is not being punished for a crime are not protected by the Eighth Amendment. Therefore, it has no application in the context of pre-trial detention and limited application for immigration detention.

Courts outside the United States have been more prone to recognize the dignity implications in all forms of detention, though they have not always found violations of dignity in the circumstances of the case, as seen in the two last cases below.

**J.M.B. and Others v. France** (2020), European Court of Human Rights, Link

The regional human rights Court found that prison conditions of severe overcrowding, extended periods of confinement – sometimes up to 22 hours a day – and unsanitary conditions, such as pest infestations, dirty toilets, inadequate ventilation, and lack of hygiene products were custodial

conditions that violated Article 3 of the European Convention on Human Rights, which prohibits torture and inhumane or degrading treatment or punishment: "[t]he State is obliged to organize its prison system in such a way as to respect the dignity of prisoners[.]"

**Minogue v. Thompson** (2021), Supreme Court of Victoria (Australia), Link

A prisoner serving a life sentence challenged the lawfulness of strip searches and random drug/alcohol tests as abridging "his right to be treated humanely and with respect for the inherent dignity of the human person" under the constitutional charter. The Court agreed that submission to certain urine tests "limited his right to be treated with humanity and respect for his dignity[,]" and that "being strip searched is inherently demeaning" and could only be compatible with the right to "respect for the inherent dignity of the human person." The Court decided that while random strip searches and urine tests violated constitutionally protected dignity, it upheld such practices following visitation by lawyers or others as a reasonable security measure.

**1 BvR 117/16** (2020), Federal Constitutional Court of Germany, Link

The Court held that "the failure to provide a minimum area of 6-7 [square meters per prisoner] constitutes a violation of his human dignity, [as does] accommodation with a toilet not being structurally separated was not compatible with human dignity." The Court thus overturned and remanded a lower court's decision to the contrary.

**R. (AB) v. Secretary of State for Justice** (2021), Supreme Court of the United Kingdom, Link

The Court rejected a claim that imposing solitary confinement for juveniles under 18 unless "strictly necessary" "diminishes human dignity" in violation of Article 3 of the ECHR, noting that the Court has invoked dignity in cases of physical force, not solitary confinement. Instead of an automatic deprivation of dignity, the Court was of the view that it should consider circumstances, including the detainee's age, the duration and stringency of the isolation, the reason for its imposition, the degree of social contact allowed, the conditions of confinement, and any effects on the detainee's health.

**Decision No. 2023-1064 QPC** (2023), Constitutional Council of France, Link

Here, criminal lawyers challenged "unworthy conditions" of those held in custody by the State. While the Council disagreed, it underscored the importance of safeguarding human dignity, for "any deprivation of liberty must be implemented with respect for the dignity of the human person[,]" and noted that the criminal code "must be carried out under conditions which ensure respect for the dignity of the person. … [T]he very purpose of these provisions is to ensure that the dignity of the person in police custody is protected in all circumstances." Nonetheless, in dismissing the claims the Council noted the means by which custody requirements reflect dignity, including minimal security measures, documentation of rest periods and meals, and the right to medical examinations and access to justice.

Insert at p. 409, after Discussion Point 4

5. In ***R. v. Hills*** (2023), Link, the Supreme Court of Canada held that imposition of a four-year mandatory minimum sentence to a juvenile for discharging an air rifle at a building was grossly disproportionate and constituted cruel and unusual punishment: "Each sentencing objective remains relevant to crafting a sentence that respects human dignity." A sentence that is "grossly disproportionate, not merely excessive" is "incompatible with human dignity," the Court ruled.

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Insert at p. 414 after Discussion Point 12

13. The Inter-American Court of Human Rights has likewise held that a sentence of life without parole violates human dignity. In ***Álvarez v. Argentina*** (2023), Link, the Court overturned a lifetime sentence without parole as violative of human dignity: "The person as a subject of dignity, holder of a personal and non-transferable destiny, with the capacity to dream and deploy his or her actions with a series of implicit possibilities to make that community, that coexistence, possible. … [That a life sentence] deprives the sentenced person of a life plan, excludes him forever from the human community, eliminating hope for a future. Confinement under these conditions is like a living death, knowing that you will be locked up and without any possibility or certainty of getting out of this situation."

14. The Canadian Supreme Court did the same thing, even if the sentence was not formally a sentence of life without parole but the sentencing scheme produced the same effect. In ***R. v. Bissonnette*** (2022), Link, the Court overturned the practice that permits judges to impose life sentences without realistic chances of parole as violative of Section 12 of the Canadian Charter of Rights and Freedoms, which protects individuals from cruel and unusual punishment. The Court emphasized the importance of rehabilitation as a penological objective tied to human dignity, and that denying any chance of parole negates this objective. "The objective of rehabilitation is intimately linked to human dignity in that it reflects the conviction that all individuals carry within themselves the capacity to reform and re-enter society." The Court also found that a sentence of life imprisonment without a realistic possibility of parole is intrinsically incompatible with human dignity. "A sentence of imprisonment for life without a realistic possibility of parole is degrading in nature in that it presupposes at the time of its imposition, in a definitive and irreversible way, that the offender is beyond redemption and lacks the moral autonomy needed for rehabilitation." The Court concluded that "by stipulating that a court may impose consecutive 25-year parole ineligibility periods, the impugned provision authorizes the infliction of a degrading punishment that is incompatible with human dignity."

Insert at p. 415 before Section 3.

In ***Rae v. United States*** (2022), Link, the High Court of Justice of the United Kingdom declined an extradition request, finding that prison conditions in the Texas penal system in the U.S. violate dignity rights incorporated in Article 3 of the European Convention on Human Rights, including overcrowding, extreme temperatures, lack of privacy, exercise, education, and access to safety and medical care and various other shortcomings: "Article 3 imposes on the relevant authorities a positive obligation to ensure that all prisoners are held under conditions compatible with respect for human dignity, that they are not subjected to distress or testing of an intensity that exceeds the level of unavoidable suffering concomitant to detention. The health and welfare of prisoners must be adequately assured."

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Insert at p. 458, after Discussion Point 21

22. The African Court of Human Rights has now on several occasions considered the relationship between the death penalty and the right to dignity protected in Article 5 of the African Charter of Human and People's Rights. Although it has not ruled that the death penalty is in all circumstances incompatible with human dignity, it has imposed dignity-based limitations on the application of capital punishment.

In ***Makungu Misalaba v United Republic of Tanzania*** (2023), Link, the African Court underscored the importance of dignity in the African scheme of human rights. "The Court observes that the concept of human dignity holds a profound significance in the realm of individual rights. It serves as an essential foundation upon which the edifice of human rights is constructed. The right to dignity captures the very essence of the inherent worth and value that resides within every individual, irrespective of their circumstances, background, or choices. At its core, it embodies and upholds the principle of respect for the intrinsic humanity of each person and forms the bedrock of what it means to be truly human. It is in this sense that Article 5 absolutely prohibits *all* forms of treatment that undermines the inherent dignity of an individual." The Court held that Tanzania had violated the Mr. Misalaba's right to dignity by his lengthy placement on death row, even though his sentence had ultimately been commuted. Nonetheless, the Court found that he had "endured the harrowing uncertainty of impending execution for an extended period of nearly six (6) years. It was only upon the granting of a Presidential Pardon that his death sentence was eventually commuted to life imprisonment. While the immediate execution of those sentenced to the death penalty is generally not encouraged due to its potential for causing an irreversible situation, the Court acknowledges that the prolonged state of being on death row inflicted considerable distress upon the Applicant. This situation has inevitably infringed upon his fundamental right to human dignity. The Court, consequently, finds that the Respondent State has violated the Applicant's right to human dignity."

The following year, the Court went further in assessing the psychological harm to those who are on death row. In ***The Matter of Romward William v. United Republic of Tanzania*** (2024), Link, the regional Court reiterated the "profound significance" of the Charter's protection of human dignity.

> The Court observes that the concept of human dignity is of profound significance in the realm of individual rights. It serves as an essential foundation upon which the edifice of human rights is constructed. The right to dignity captures the very essence of the inherent worth and value that resides within every individual, irrespective of their circumstances, background, or choices. At its core, it embodies and upholds the principle of respect for the intrinsic humanity of each person and forms the bedrock of what it means to be truly human. It is in this sense that Article 5 absolutely prohibits all forms of treatment that undermines the inherent dignity of an individual.
>
> The Court recalls its judgment that the time spent awaiting execution can distress person sentenced to death particularly when the duration is long. The Court emphasises that, detention on death row is inherently inhuman and encroaches upon human dignity. This Court reiterates that the distress associated with detention awaiting execution of the death sentence stems from the natural fear of death and the uncertainty that a condemned prisoner has to live with. In such a case, States such as the Respondent are encouraged to determine appropriate sentences that remove the constant possibility of the enforcement of the death penalty for persons originally sentenced to death.
>
> The Court notes, in the present case that the situation is exacerbated by the fact that the Applicant was sentenced to death without consideration of mitigating circumstances including an alternative sentence, as the domestic court's discretion was removed by law, in contravention of the Charter. Given these circumstances, the Applicant invariably suffered psychological and emotional distress which constitutes a violation of his right to dignity.
>
> Consequently, the Court finds that the Applicant's right to dignity protected under Article 5 of the Charter was violated.

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Insert at p. 467 after Discussion Point 2

The Constitutional Court of South Africa reaffirmed the principle of *August and Another* in ***Sonke Gender Justice v. President*** (2020), Link. There, the Constitutional Court overturned laws that restricted the voting rights of those convicted of crimes: "Human dignity is in this case expressed as the right to participate in elections. Understood in these terms, the right to dignity guarantees that inmates still 'count', notwithstanding their incarceration." The Court held that inmates remain

members of society and are entitled to rights, except where justifiably limited and stressed the need for punishment to respect human dignity.

By contrast, in the United States, the Supreme Court's limited interpretation of the Eighth Amendment provides no such protection. In ***Hopkins v. Watson*** (2024), Link, the Fifth Circuit, sitting en banc, held that "felon disenfranchisement is not a punishment, much less cruel or unusual," and that the Equal Protection Clause does not provide protected status to felons, including those who have served their time. Several judges disagreed in detailed dissents, concluding that "denying released offenders the right to vote takes away their full dignity as citizens, separates them from the rest of their community, and reduces them to 'other' status."

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Insert at p. 477, after Discussion Point 2

In ***NGOCB v. Gitari*** (2023), Link, the Supreme Court of Kenya affirmed a lower court's finding that rejecting an application to establish an NGO to advocate for the rights of LGBTQ+ individuals in Kenya violates Article 36 (non-discrimination) of the Constitution: "[a]n interpretation of non-discrimination which excludes people based on their sexual orientation would conflict with the principles of human dignity, inclusiveness, equality, human rights and non-discrimination."

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Insert at p. 478 after Note 4

Consider the dignity-based association rights of candidates for public office. In ***New Nation Movement NPC v. President of the Republic of South Africa*** (2020), Link, the Constitutional Court of South Africa held unconstitutional a law that required those seeking elective office to join a political party: "Coercion implicates the right to dignity. Who one associates with or whether one associates at all are so close to the inner self that it is an affront to who one truly is and, indeed, an assault on one's dignity, to be told who to associate with or to associate when you do not want to. And why coercion of this nature impinges on dignity is because dignity underlies all other fundamental rights." The Court reasoned that "compelling people to act in a particular way may impinge on the right to human dignity protected by section 10 of the Bill of Rights. In this instance compulsion is forcing people to form or join political parties against their will. So important is the right to human dignity to our constitutional order that it features as a founding value … of the Constitution."

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