



## PERCEPTION AND PRACTICE DEFAMATION LAWS ACROSS JURISDICTIONS OF EUROPE AND AZERBAIJAN

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**Abstract** - This article is dedicated to different and common characteristics of defamation laws in Europe and Azerbaijani jurisdiction from both practice and theory perceptions. The study focuses on the intricate interplay between human dignity, honor, and defamation law, striving to elucidate the tangible applications of these concepts within legal paradigms. Through a detailed examination of the deployment of human dignity and honor within the legal sphere, the research aims to uncover various legal perceptions that emphasize protecting these fundamental human values. The exploration is not limited to theoretical postulations but extends to the practical perspectives that shape legal constructs and decisions. By identifying diverse applications and interpretations of the concepts of human dignity and honor within different legal contexts, this analysis contributes to the broader understanding of how these notions are protected and manifested within the law.

**Keywords:** defamation, jurisdiction, dignity, honor, UN, UDHR, ECtHR

### INTRODUCTION

This article aims to deepen comprehension of how the protection notion of human dignity and honor is applied within legal discourse. It offers a theoretical yet empirical examination of this concept's application in the essence of the European and Azerbaijani legislation framework. In essence, it scrutinizes the practical deployment of human dignity and honor within defamation law and the relationship of these uses to more theoretical perspectives on human dignity and honor. This analysis endeavors to find different legal perceptions concerning protecting human dignity. Simultaneously, it hopes to add to the broader comprehension of the protection of human dignity and honor law by identifying various applications of the concept.

#### 1. Human Dignity and Honor in Law Context

Universal modern law recognizes the worth and applicability of human dignity, which is encapsulated in the legal idea of "personality" or equal status among individuals, rooted in human dignity. Article Sixteen of the UN Covenant on Civil and Political Rights states, "Everyone shall have the right to recognition everywhere as a person before the law"<sup>1</sup>. This is commonly understood by scholars to mean that each individual, recognized as a person (not an object), is entitled to legal recognition, implying they are recipients of rights and bearers of obligations and responsibilities. Modern law's achievement in asserting equal legal status among all individuals effectively integrates human dignity into positive law; therefore, the equality of personality is a logical consequence of the inherent human dignity everyone possesses; this universal principle of human dignity has evolved into equality of personality<sup>2</sup>. Thus, personality becomes a testament to individuals' equal status and uniform capacity for rights, affirming that each person is equally entitled before the law. The personality of a natural person becomes a legal qualification and status, a direct representation of human dignity. As the global community has reached a consensus on human dignity, it is a given that all national governments affirm "equality of personality for all"<sup>2</sup>. To uphold human dignity, the legal institution of personality has been established, ensuring equal entitlement for all as legal subjects. Therefore, we can state that human dignity forms the ethical basis for the equality of personality and serves as a legal prerequisite for ensuring equality for all<sup>2</sup>. Honor is the external process by which individuals gain societal value. Being honorable means incorporating these societal values into one's personal existence, an aspect of dignity<sup>3</sup>.



The interplay between dignity and human rights is intricate and sparks disagreement in scholarly circles. The question at the heart of the debate is whether dignity should be perceived as the bedrock of human rights, or whether it should be considered a right in itself<sup>4</sup>. This corresponds to whether dignity is an underlying value, and thus logically precedes rights, or if it is an ultimate goal that specific rights must safeguard. Traces of the concept of dignity can be found as far back as Roman antiquity. During this period, dignity (or *dignitas*) signified the honor and reverence accorded to an individual based on their elevated social status, explicitly referring to noblemen and individuals holding significant positions<sup>4,5,6</sup>.

### 1. Look at the European Defamation Legal Framework

The Second World War marked a profound shift in human history. The war's brutality, the utter disregard for human life, and the calculated execution of millions induced deep shock and trauma across nations, leading to new political and ideological paradigms. Post-war, human dignity was established as a pivotal concept in the United Nations Charter and the Universal Declaration of Human Rights (UDHR), significantly increasing its reference and legal use in national constitutions. Horrified by the atrocities committed during the war, the international community sought to emphasize the intrinsic value of every human being and to establish that all lives deserved protection<sup>7</sup>. This principle was enshrined in the UDHR which states in its preamble that "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"<sup>8</sup>. Today, human dignity is found in the constitutions of 160 countries, constituting 83% of all UN sovereign states, and serves as a fundamental moral and legal value<sup>9</sup>. The integration of human dignity as a critical term in these landmark documents undoubtedly sent a powerful message. Since 1945, the term has been incorporated into the constitutions of from 5 to 160 countries<sup>9</sup>. In European nations, the use of human dignity is shaped by various national and regional European judicial interpretations<sup>11</sup>. The United Kingdom does not have a written or codified constitution like many other nations. However, the Human Rights Act, which brings the European Convention on Human Rights into UK law, does contain provisions that protect aspects related to human dignity and honor, even if it does not explicitly use these terms<sup>11</sup>. In Finland, human dignity is referred to in the reasoning part of judgments in various legal cases. It is typically used in three different ways: restrictive, enabling, and compensatory, reflecting traditional ideas connected with the concept<sup>11</sup>. The mention of human dignity by the former European Commission President in reference to the Syrian crisis underscores its importance in the discourse surrounding humanitarian crises and international human rights<sup>12,13</sup>. Juncker's call to view the refugee crisis not just as a logistical or political issue but as a 'matter of humanity and human dignity resonates with the foundational principle that every individual deserves respect and basic rights irrespective of their circumstances. Germany is an example of a nation that has explicitly enshrined human dignity in its constitution<sup>14,15</sup>. Germany gives significant importance to human dignity in its constitutional jurisprudence. It is understood not just as the most basic foundation of rights but also as a right in itself with both negative and positive implications for state actions. The inviolability of human dignity holds the most prominent place in the German constitution, imposing an obligation on the state to provide at least minimal subsistence to every individual. Dignity is a cornerstone of the German Constitution, explicitly stated in Article 1: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority"<sup>15</sup>. Defamation is treated differently in Germany compared to other jurisdictions. For instance, the German legal system delineates between different types of defamation, as evident in provisions<sup>15</sup>. Such as "Intentional Defamation" (Article 187) and "Defamation in the Political Arena" (Article 188), "Defamation of the Deceased" (Article 189). German law specifically criminalizes defamation of deceased persons, which is not the case in many other jurisdictions. Unlike in some other legal systems, truth is not always an absolute defense against defamation in Germany. German law considers the malicious intent of the defendant. Even if the defamatory statement is true, it may still be punishable if it was made with the intent to insult or degrade the victim. German law tends to be proactive about removing defamatory content. In certain



circumstances, courts may order the removal of such content from the internet, including from search engine results<sup>15</sup>.

The Constitution of the French Fifth Republic does not explicitly mention "human dignity". However, the principle of human dignity is implied and supported by the Declaration of the Rights of Man and of the Citizen which is integral to the Constitution. French law is founded on the principles of "Liberty, Equality, and Fraternity" which inherently uphold human dignity. Defamation in France is considered a serious matter and is addressed under the French Press Law. Article 29 of the French Press Law defines defamation as "any allegation or accusation of a fact that damages the honor or consideration of the person or body to which the fact is imputed"<sup>16</sup>. In French law, defamation is the act of making false accusations that tarnish the honor or reputation of an individual or institution. Defamation in France is considered generally a criminal offence, unlike many other jurisdictions where it is typically handled as a civil matter<sup>16</sup>. French law distinguishes between direct defamation (*diffamation directe*), where the victim is directly targeted by the defamatory statement, and indirect defamation (*diffamation indirecte*), where the defamatory statement targets the victim indirectly or allusively<sup>16</sup>. This is not commonly observed in many other legal systems. Another distinct feature is the differentiation between public and private defamation. Public defamation (*diffamation publique*) refers to defamatory statements made in a public setting, such as through newspapers or broadcast media. Private defamation (*diffamation privée*) refers to defamatory statements made in a private context<sup>16</sup>. The penalties for public defamation are higher. Unlike some jurisdictions, French defamation law allows the defendant to escape liability if they can prove that the defamatory statement is true, known as the "exception of truth" (*exceptio veritatis*); however, this defense is not allowed in certain sensitive cases, like those related to the victim's private life or cases more than ten years old<sup>16</sup>.

The European Convention on Human Rights, though it does not specifically mention human dignity, often invokes it in cases related to core human rights. The European Court of Human Rights has also found "respect for human dignity and human freedom" to be the very essence of the Convention. International instruments like "The Universal Declaration of Human Rights", "The International Covenant on Economic, Social, and Cultural Rights", and "The Covenant on Civil and Political Rights" all mandate the preservation of human dignity within various international contexts. The European Court of Human Rights (ECtHR) has taken a pragmatic, practice-based approach toward human dignity, in line with the intent of its founders. Rather than treating human dignity as a standalone right, the ECtHR primarily invokes it within the context of core human rights<sup>18</sup>. Instances where human dignity has been referenced include cases involving the right to a fair hearing, the right not to be punished without a legal prohibition, the prohibition of torture, and inhuman or degrading treatment or punishment, and the right to respect for private and family life<sup>18</sup>. The first instance of the ECtHR's invocation of human dignity occurred in the case of *Tyrer v. UK*. In this case, the court ruled that corporal punishment, administered as part of a judicial sentence, contravened Article 3 of the European Convention on Human Rights<sup>18</sup>. Although the applicant didn't suffer severe or long-lasting physical effects, the court held that the punishment - where the applicant was treated as an object in the power of the authorities constituted an assault on a person's dignity and physical integrity<sup>17</sup>. This, they stated, is precisely what Article 3 seeks to protect. Hence, this case established the precedent of considering human dignity as a vital aspect of human rights protection in the ECtHR's jurisprudence. ECtHR has indeed expanded its interpretation of the role of human dignity within the European Convention on Human Rights over time. The court has come to regard human dignity as foundational to all rights protected by the Convention. Both of these cases *Pretty v. United Kingdom* and the *Case of Christine Goodwin v. United Kingdom* illustrate the ECtHR's view of human dignity as a central and underpinning concept in the interpretation and application of the rights protected by the European Convention on Human Rights<sup>17,18</sup>. It further underscores the court's emphasis on the necessity of respecting human dignity and freedom in ensuring the just and fair application of the Convention's provisions<sup>17,18</sup>.



## 2. Perception in Azerbaijani Legislation

The legal mechanisms in place to protect human dignity and honor in Azerbaijan, as in many other countries, are designed to promote respect for individuals and protect them from harm. However, it's important to note that the protection and interpretation of these laws can vary widely in practice and are dependent on a variety of factors, including the political and social climate. In present-day Azerbaijan, the principle of equality is a fundamental value enshrined in the Constitution and is a core characteristic of democratic law, implying that equal human dignity is intrinsic to Azerbaijan's constitutional and legal ethos<sup>19</sup>. The Constitution of Azerbaijan specifically recognizes the rights and freedoms of individuals, including the right to life, the prohibition of torture, and the right to liberty and security. In particular, Article 46 of the Constitution of the Republic of Azerbaijan states: "Everyone's honor and dignity shall be inviolable. Everyone is obliged to respect another person's honor and dignity<sup>19</sup>. The honor and dignity of a person is protected by the law." This means that all individuals are legally obliged to respect the honor and dignity of others, and if this right is violated, the person whose rights have been violated has the right to seek legal protection. The Criminal Code of Azerbaijan includes specific offenses related to the violation of human dignity and honor<sup>20</sup>. Additionally, the Criminal Code of Azerbaijan contains provisions that punish offenses such as defamation (Article 147), insult (Article 148), defamation or insulting using fake usernames, profiles, or accounts in the Internet information resource (Article 148-1) and violation of privacy (Article 156) can lead to criminal penalties. It is common for civil codes to contain provisions related to the protection of a person's honor and dignity, typically in relation to defamation (which can be both written - libel or spoken - slander) and privacy laws<sup>21</sup>. Many civil codes around the world, including those in many European countries and Azerbaijan as well, provide legal remedies for the protection of an individual's honor, dignity, and business reputation. If defamatory information is spread about a person and it is not truthful, the aggrieved party has the right to bring a lawsuit and demand that the false information be refuted in a court of law. According to Article 23 of the Civil Code of the Republic of Azerbaijan, an individual has the right to take legal action if information that defames their honor, dignity, or business reputation is disseminated, and the person who disseminated the information fails to prove its truthfulness<sup>21</sup>. The Plenum of the Supreme Court is an important body that provides legal interpretations and guidelines to lower courts for complex issues, including the concept of moral damage. It reflects on previous decisions and ongoing practices by the courts regarding the application of laws that pertain to the compensation of moral damage. Decision No. 7 of the Plenum of the Supreme Court of the Republic of Azerbaijan, provides a clear outline of how to handle cases of defamation<sup>22</sup>. According to this decision, if an individual spreads false information that defames another person's honor and dignity (which could qualify as insult or slander), the victim has the right to take legal action. According to Decision No. 3 by the Plenum of the Supreme Court of the Republic of Azerbaijan, the goal of the provision of criminal responsibility for the commission of acts that lead to criminal prosecution under special charges is to protect the honor, dignity, and reputation of every individual from illegal acts<sup>23</sup>. This decision lays out the judicial practices for considering cases involving complaints under these special charges in the country's criminal legislation. This emphasizes the commitment of Azerbaijan's legal system to safeguard the moral values of every individual against illicit activities. The decision has provided explicit definitions for the terms "honor", "dignity", and "reputation" in the context of their legal implications.

1. Honor- according to this decision, refers to the value attributed to an individual based on their moral and spiritual qualities as a member of society, and their approach towards other people, the state, and the society as a whole.
2. Dignity- described as an individual's perception of their moral and intellectual qualities, their standing and esteem in society.
3. Reputation - refers to the position a person holds in society, in a group, among friends, or in an organization, stemming from their capabilities.

These definitions underscore the profound interconnection between these values - honor, dignity, and reputation - all of which are moral, ethical, and social in nature. This underlines the

importance of safeguarding these values, a responsibility that the state takes on to ensure that every individual's honor, dignity, and reputation are upheld and protected from unlawful actions.

### CONCLUSION

Utilizing human dignity as a legal concept provides a contingency plan to tackle serious future challenges. It's important to clarify that it's not the equality of individuals that grants them dignity. Instead, the inherent dignity of each human being predicates their equality. Hence, if one were to pinpoint a "foundation" for human dignity, it would simply be one's existence as a person, like any other, equally deserving of dignity under the law. The law does not confer or originate human dignity; rather, it recognizes and validates it. As a general result, there are different opinions about the adoption of the "Law on Defamation" in the Republic of Azerbaijan. Freedom of thought and speech can be taken into account as the basis for the adoption of this law. Not all European countries have adopted defamation law, and each country reflects the protection of honor and dignity in different forms in its domestic legislation. Certain plans in the field of "Law on Defamation" are underway in Azerbaijan, and there should be strong norms in the legislation to bring the protection of honor and dignity to an even higher level.

### ACKNOWLEDGEMENT

I would like to express my appreciation for the unwavering support and guidance of my colleagues and mentors throughout my academic and research endeavors. Their collective wisdom and encouragement have been instrumental in shaping my perspective and approach to this work.

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