

**EVOLVING HUMAN DIGNITY RIGHTS IN ALBANIA, GREECE, ITALY & SERBIA:
A CONTEMPORARY COMPARATIVE ANALYSIS**

I. INTRODUCTION

All humans have “human dignity rights” according to the Universal Declaration formally adopted in 1948. Nevertheless, in practice, these rights are not uniform around the world. By analyzing comparative laws of certain countries, the non-uniform application of human dignity rights can highlight the impact of this in discrete areas of the law to improve well-being across political boundaries and cultural differences. The purpose of this research is limited to a literature review of the constitutional language and recent cases in Albania, Greece, Italy, and Serbia with regard to human dignity rights.

Although this region is geographically concentrated, it is surprising how differently human dignity rights are applied in practice through constitutional and case law comparisons. These four countries comprise part of the Adriatic-Ionian Region in Southern Europe. This research separates each country into a separate section that contains a review of each respective constitution for the specific mentions and explanations of the right to human dignity. Additionally, this research provides an analysis of each country’s respective contemporary judicial opinions to show how their respective courts apply dignity rights in specific areas of law. This review is being shared with the Albanian Institute for Advanced Legal Studies (known as “AIALS”)¹to

¹ The Albanian Institute for Advanced Legal Studies (AIALS) is a small research institute located in Tirana, Albania and engaged in comparative legal research at the regional level, involving several of the neighboring countries that are part of the Adriatic-Ionian Region, which includes Albania, Greece, Italy, and Serbia. This paper is not in traditional bluebook formatting at their request.

assist in future comparative legal research involving these jurisdictions and their applications of human dignity rights.

The Adriatic-Ionian Region is defined primarily through their connection to the Adriatic and Ionian Sea basins.² The area is home to over 70 million people and the countries share a common goal to strengthen the geographical continuity in Europe and intensify their ecumenic growth and protection of their mutual sea basin commodities.³ The region is made up of eight countries; however, our focus in discussion of the right to human dignity will be primarily on the applications of law in Albania, Greece, Italy, and Serbia.

Human Dignity can be defined as both a constitutional right and a constitutional value. Human dignity as a constitutional value is providing the individual the freedom of choice, the freedom of will, the ability to write the story of their own life.⁴ Human dignity as a right is best defined by Aharon Barak in the following paragraph of his book:

It is further held, in a long series of opinions, that human dignity extends to all those activities in which human beings must be recognized as free agents, developing their body and mind according to their own free will. Human beings' free will is an expressions of their humanity, and of their desire to shape and guide their own lives and realized themselves. It is the right of all human beings to develop their own personality, character, lifestyle, identity, relationships with others, and world view. It is the right to decide with whom to share one's life, start a family, and raise children. It is the right to parenthood. It is the right to decide where to be and where to go. It is the right to enter into a contract, choose a name, grow a beard, have sexual relations, eat whatever one wants, and speak whichever language one chooses. It is the right to think and to want. It is the right to decide what to believe and what not to believe. It is the right to know who your father is, who your mother is, and where you came from. It is the right

² <https://www.adriatic-ionian.eu/about-eusair/adriatic-ionian-region/>

³ Id.

⁴ *The Constitutional Value and the Constitutional Right* p. 363

to raise, nurture, and educate our own children. It is the right to write the story of our own lives.⁵

The relationship of human dignity as a value to the constitutional right to human dignity is one that is of support and foundation. The value exists as a concept and the right exists as a means of carrying out the concept. In my opinion, when one is born, one is provided with the self right to human dignity. The governments discussed herein are, in my opinion, catching up to the inherent dignity provided to citizens, by simply being born a human, through express statements in their constitutions or through other means of interpretation by governing bodies. As a human, we perceive the right to be respected of our own individual freedoms and choices as something that is provided for simply being born. Human dignity rights are provided by the constitutions as discussed in this paper, but is defined either implicitly or expressly through legislative and judicial means with the highest courts in each country having a final say on the right itself and the interpretation of such right as it applies to the relative facts. It is crucial to understand that each country discussed herein has an element of human dignity within their constitution but the language is interpreted differently throughout the judicial decisions provided.

The European Court of Human Rights (“ECtHR”) is the judicial body which governs based upon the international treaty to protect human rights and political freedoms in Europe which is also known as the European Convention of Human Rights (“ECHR”). Any person who believes their human rights or political freedoms have been violated and is a citizen of a state party to the convention may submit an application to the ECtHR for review. The process for review that takes place for an application to be heard by the ECtHR is narrowly construed. The

⁵ *Id.* at p. 368

applicant must exhaust all domestic course of remedy before submitting an application to the ECtHR for review. The ECtHR will review the application for admissibility and then issue a decision based upon the treaty that the state has ratified to determine whether there has been a violation of the applicant's rights. It is important to understand the ECtHR's role in interpreting the human rights guaranteed to each individual in order to understand how the rulings of the court provide persuasive rule explanation for each article.

The European Social Charter ("ESC") is the support system for the European Convention for Human rights. The charter consists of multiple countries in participation, including the four countries referenced herein.⁶ As part of the ESC, each participating country agrees to assure positive rights and freedom to each individual citizen as part of their daily lives. Examples of the rights provided include housing, right to protection against poverty and social exclusion, right to housing, right to protection in cases of termination of employment, right to protection against sexual harassment in the workplace and other forms of harassment, rights of workers with family responsibilities to equal opportunities and equal treatment, rights of workers' representatives in undertakings.⁷ Each individual state must submit annual reports showing how they implemented the rights provided under the ESC to their public. Ways in which the individual countries can show that they are complying with the ESC rights and privileges is through added laws and amendments to their individual constitutions.

II. ISSUE

⁶ <https://www.coe.int/en/web/turin-european-social-charter/signatures-ratifications>

⁷ <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163>

Dignity rights of the individual is a consistently evolving topic of today's legal world. Dignity rights of the individual and the right to human dignity can be and is used interchangeably throughout this discussion as they are one-in-the-same. The constitutional revamps throughout the countries discussed alone show how important it is to respect the right to human dignity. While not all countries have adapted such an open interpretation of human dignity, Albania, Greece, Italy, and Serbia have done so through their respective articles and revisions of their constitution and through the ratification of the ECHR. Discussed herein are the constitutional provisions which openly reference the rights of the individual to human dignity, supportive case law for analysis, and other relevant data provided to better assist the Albania Institute of Advanced Legal Studies in understanding this new area of law.

III. ANALYSIS

A. ALBANIA: TREATMENT OF PRISONERS.

Albania made the right to human dignity a part of their constitution through their preamble and individual articles. The Albanian Constitution was drafted in 1998 and amended most recently in 2015. The preamble provides their people with a right to dignity by stating, "with a pledge to protect human dignity and personhood, as well as for the prosperity of the whole nation, for peace, well-being, culture and social solidarity."⁸ Presumably, the preamble of the Constitution outlines the purposes of the Constitution itself. Having the right to human dignity listed so early in the Constitution is interpreted as the utmost importance and the underlying basis for

⁸ <https://www.legislationline.org/documents/section/constitutions/country/47>

the remaining parts of the document.⁹ It is to be founded upon the mention of human dignity, therefore, it can be read into each provision as an underlying purpose not expressly stated.

The Albania Constitution Part 1, Article 3 provides that “The independence of the state and the integrity of its territory, the dignity of the person, his rights and freedoms, social justice, the constitutional order, pluralism, national identity and inheritance, religious coexistence, and coexistence with, and understanding of Albanians for, minorities are the basis of this state, which has the duty of respecting and protecting them.”¹⁰ Under the *Grori v. Albania*¹¹, the prisoner brought forth, *inter alia*, an action against the Albanian prosecution for inhumane treatment while imprisoned. Under this action, *Grori* was not provided with adequate and proper treatment for his multiple sclerosis (“MS”) condition, which he developed during his imprisonment. *Grori* rightfully claimed that his medical treatment was delayed significantly which caused additional harm to his health which could have been prevented. On 24 September 2003, 13 January 2004 and 16 February 2004, in view of the deterioration in the applicant’s health, his representative and his father requested the Ministry of Justice and the prison authorities to allow him to be examined by appropriate doctors.¹² It was not until nearly a year later that the prisoner was allowed to be seen for his health complaints. Approximately a month after his examinations, the prisoner was diagnosed with MS. A year after the diagnosis, the doctors confirmed, again, that the pris-

⁹ “A global survey of the function of preambles shows a growing trend toward its having greater binding force—either independently, as a substantive source of rights, or combined with other constitutional provisions, or as a guide for constitutional interpretation. The courts rely, more and more, on preambles as sources of law.” <https://academic.oup.com/icon/article/8/4/714/667109>

¹⁰ *Id.*

¹¹ http://www.hr-dp.org/files/2013/09/11/CASE_OF_GRORI_v._ALBANIA_.pdf

¹² *Id.*

oner suffered from MS and that his health was deteriorating due to his complete lack of medical treatment. At this time, the date was early February 2006, over two years after his initial complaint. In January 2008, the courts finally provided an interim treatment plan demanding that the Albanian Government take the prisoner to a civilian hospital facility for treatment. Again, there was delay, the medical transfer did not occur until weeks later, upon which the doctors at this facility too confirmed that the prisoner suffered from MS (a third diagnosis of the same disease that the prisoner is attempting to gain treatment for since late 2003. At this point, the prisoner has multiple diagnosis for the same MS disease with little to no treatment thereof. My analysis of the rights provided to the prisoner under Article 3 of the Albanian Constitution and the Preamble shows that by neglecting his medical conditions and delaying his treatment the State has violated his right to human dignity. Dignity belongs to the individual, and the treatment delay with this prisoner openly shows that the government provided unfair and inhumane treatment of this prisoner as it took years to get proper treatment for a degenerative disease that would be less impactful to the human body if treated properly.¹³ Though the applicant in this matter is a prisoner, he is still a person, a human, a dignified being, and as such still holds the right to be treated with human dignity as guaranteed to him by the Albanian constitution and Albania's ratification of the ECHR.

The Albanian courts reference multiple cases to support their decision that the prisoner was treated unfairly in his pursuit for medical treatment of his degenerative disease. The court cites to *Kudla v. Poland*, a similar inhumane treatment while imprisoned case, which provides

¹³ <https://www.mayoclinic.org/diseases-conditions/multiple-sclerosis/diagnosis-treatment/drc-20350274>

that "...the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity..."¹⁴ That is not how the prison acted here. They showed little respect for the prisoner's human dignity by delaying his medical treatment for years through bureaucratic measures thus causing him undue physical hardship.

The Albania Constitution Part 2, Chapter 2, Article 28, Section 5 provides, "Every person whose liberty was taken away pursuant to article 27 has the right to humane treatment and respect for his dignity."¹⁵ In the case of *Kudla, v. Poland*, a Polish national was imprisoned on charges of fraud. During his detention, he claimed to be treated inhumanely by the Polish government. His complaint brought forth in the ECtHR alleged that he was deprived of his right to medical treatment for his chronic depression which is a violation of Article 3 of the ECHR which prohibits torture. As a result of his delay of treatment, the applicant attempted suicide multiple times and caused multiple delays in his hearing. The ECtHR ruled that there was no violation of Article 3 of the ECHR and applied the rights through the following two excerpts of the opinion:

93. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment.

94. Nevertheless, under this provision 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 in-

¹⁴ See, *Kudla v. Poland*, <https://www.globalhealthrights.org/wp-content/uploads/2013/10/Kudla-Poland-2000.pdf> ¶94; See also, *Ostrovar v. Moldova*, https://www.tobaccocontrolaws.org/files/live/litigation/1031/MD_Ostrovar%20v.%20Moldova.pdf ¶79

¹⁵ Constitution of Albania: <https://www.legislationline.org/documents/section/constitutions/country/47>

herent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see, *mutatis mutandis*, the *Aerts v. Belgium* judgment of 30 July 1998, Reports 1998-V, p. 1966, §§ 64 et seq.).¹⁶

The court's opinion provides that an individual's right to humane treatment is included under Article 3 however, its application has limited interpretation to a general obligation. The court further provides us with clarification that the individual State must respect the human dignity of the detainee by providing him with the requisite medical assistance as there is inherently a unavoidable measure of suffering in detention that one cannot avoid, therefore they State must still provide the detainee with a baseline of medical treatment as it pertains to him or her. This means that even though they need not go above and beyond the general needs of the detainee, providing the chronically depressed applicant herein with regular psychiatric treatments is necessary to maintain his general health. The courts found that Poland did provide the applicant with regular psychiatric visits therefore his right to human dignity was not violated.

B. GREECE: FAIRNESS IN WORK AND HOUSING.

Greece's Constitutional reference to dignity in Part 2 Article 72, states, "torture, any bodily maltreatment, impairment of health or the use of psychological violence, as well as any other offense against human dignity are prohibited and punished as provided by law."¹⁷ The broad statement that touches upon human dignity is narrowed through the court's application of the ar-

¹⁶ <https://www.globalhealthrights.org/wp-content/uploads/2013/10/Kudla-Poland-2000.pdf>

¹⁷ Constitution of Greece: <https://www.legislationline.org/documents/section/constitutions/country/27/Germany/show>

ticle. In a case of unfair treatment of others, *QCEA v. Greece*,¹⁸ the ECtHR discusses the individual's right to work freely. This case argues that the conscientious objectors to the military work requirement, for which all citizens of age are subject, are provided alternatives that are grossly ill-measured in comparison to those who do not have a conscientious objection. In other words, because of their religious beliefs, these individuals are unable to serve in the military as an ordinary citizen would. They are provided with alternatives that go above and beyond the time requirement that an ordinary citizen would be required to serve, and the alternative work options are unfair to the citizen themselves as they come with longer hours and lower pay. The unfair work life that the conscientious objector is subject to is a violation of the individual's human dignity. By telling these individuals, that because they choose to believe a particular religion that prevents them from participating in ordinary military activities means that they must be subjected to longer and arguably more vigorous positions is treating these individuals with less dignity in comparison. Though the court does not explicitly cite to Article 72, it can be assumed as a basis for the opinion that the conscientious objector is being treated unfairly, therefore the individual's human dignity is violated as every citizen has the right to be treated fairly within the context of the relative facts. Here for example, two individuals of the same age but different religious views are required to perform two very different sets of tasks to fulfill their military duty required by law. This is encroaching upon the human dignity of the religious individual with an objection to using guns for example, as compared to the religious individual who does not have an objection to the use of weaponry.

¹⁸ See, *QCEA v. Greece*, https://www.coe.int/en/web/turin-european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-8-2000-quaker-council-for-european-affairs-qcea-v-greece?inheritRedirect=false

The second part of the Constitution of Greece that mentions human dignity is Part 4 Section 1 Article 106-2 which states that “Private economic initiative shall not be permitted to develop at the expense of freedom and human dignity, or to the detriment of the national economy.”¹⁹ In the case of *INTERRIGHTS v. Greece*²⁰ Complaint No. 49/2008: The state has failed to provide proper justification for evictions and did not conduct them in ways that respected the Romas’ dignity, nor did it provide alternative accommodations for the Roma people which is their right. This case cites explicitly to Article 16 of the European Social Charter (“ESC”) which provides the right of the family to social, legal, and economic protection. The Roma were unable to take advantage of this right, thus allowing a violation of their dignity rights provided to them under the ESC. Though the opinion only cites to the ESC, it can be found that the lack of mention of dignity shows that the courts already imply that it is the right for the Roma population.

Though dignity rights is not mentioned in this case, it is assumed by the courts that the Roma, like the other citizens of the Greek culture, are born with the right to dignity. Under the constitution, Part 2 Article 72: torture, any bodily maltreatment, impairment of health or the use of psychological violence, as well as any other offense against human dignity are prohibited and punished as provided by law. While this statement begins with the demonstrative statement in regards to bodily harm, it also concludes that “any other offense” against human dignity is prohibited. Plainly stated, the Roma people have a *prima facie* right to dignity.

¹⁹ Constitution of Greece: <https://www.legislationline.org/documents/section/constitutions/country/27/Germany/show>

²⁰ See, *INTERRIGHTS v. Greece*, <https://www.escri-net.org/caselaw/2013/international-centre-legal-protection-human-rights-interights-v-greece-complaint-no>

**C. ITALY: MEDICALLY ASSISTED PROCREATION AND PRE-IM-
PLEMENTATION DIAGNOSIS.**

Italy's constitution was adopted in 1948 and most recently amended in 2012.²¹ Italy provides the right to dignity through the following articles:

- Italy Fundamental Principles Article 3: All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions;
- Part 1 Title 3 Article 41- Private economic enterprise is free. It may not be carried out against the common good or in such a manner that could damage safety, liberty and human dignity.

Each mention of dignity is further defined through its application in the court system. Indubitably, article three is further in alignment with the right to dignity as an individual. Article 41 has a broader application in that it applies to the economy itself and its effects on the individual's right to human dignity.

In the matter of *Costa and Pavan v. Italy*, an Italian couple who discovered that after their first child was born with cystic fibrosis that they were healthy carriers of the disease wished to screen any future embryo's. Costa became pregnant again and it was found that the unborn child also had cystic fibrosis and decided to terminate the pregnancy on medical grounds. The couple wanted to genetically screen any further embryo's prior to implantation by performing a pre-implantation diagnosis ("PID") and in order to do so would utilize in vitro fertilization. The current law prohibited PID with few exceptions, none of which the Costa and Pavan couple fit under therefore it was not accessible to them. Costa and Pavan lodged a complaint with ECHR stating that based on Article 8 of the Convention, their only recourse in order to give birth to a baby free

²¹ https://www.constituteproject.org/constitution/Italy_2012.pdf?lang=en

of cystic fibrosis “was to start a pregnancy by natural means and medically terminate it every time the fetus tested positive for the disease.”²² The couple further argued that under Article 14 of the ECHR they were being discriminated against compared to those who were sterile or if the man had a sexually transmitted disease.²³ The courts in Italy had previously ruled that DPI was available to a couple who did not meet the exceptions, however, it was stated that this was a “one-off” decision and it did not apply in this matter.

The ECHR ruling found in favor of the applicants in regards to their argument based on article 8 of the Convention. The ECHR ruling considered that the applicants wished to use medically assisted procreation and PID “in order to have a baby that did not suffer from cystic fibrosis was a form of expression of their private and family life that fell within the scope of Article 8.”²⁴ The ruling pointed to the inconsistency in Italy’s practices that “prohibited the implantation of only those embryos which were healthy, but authorizing the abortion of fetuses which showed symptoms of the disease.”²⁵ Which resulted in the applicants only choice being that they conceive naturally and terminate the pregnancy until they bear a child that does not have the physical deformities that they are trying to avoid. It is important to address that the ECHR rejected the couple’s claim based on Article 14 of the Convention as “manifestly unfounded” stating that “where access to PID was concerned, couples in which the man was infected with a sexually transmissible disease were not treated differently to the applications, as the prohibition applied to

²² *Costa and Pavan v. Italy*, Application No. 54270/10

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

all categories of people.”²⁶ Article 14 reads “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”²⁷

Under these facts, and the ruling of the ECHR, you can derive the implied human right to dignity as the couple are guaranteed this fundamental right, which carried on to their family through Article 8. Though, in this instance like others mentioned above, dignity is not expressly stated it is implicitly provided as part of the opinion of the courts. It would violate the human dignity of the couple, if they were not provided with the right to perform PID. To subject the couple to a trial and error pregnancy method of conception in order to birth a child without the disease that both parents carry would be inhumane and a blatant violation of their dignity and the unborn child’s.

In view of Human Dignity for the Roma population in Italy, it has been a recent topic of the far-right Italian Minister, Matteo Salvini, who wishes to expel thousands of non-Italian Roma based immigrants from the country. Mr. Salvini threatened through his social media platform and at electron rallies throughout Italy that he will “take on” the Roma population in Italy and define them by numbers. He stated that he wished to conduct a racial consensus to gather and accurate reading of the amount of Roma population in Italy, and would order all non-Italian Roma population to be expelled from the country. His statements were questioned greatly by additional government officials who question the legality of his desire to single out the Roma

²⁶ Id.

²⁷ https://www.echr.coe.int/Documents/Convention_ENG.pdf p. 32

population. Carlo Stasolla, President of Associazione 21 Luglio, which supports Roma rights, told the Ansa news agency “The interior minister does not seem to know that a census on the basis of ethnicity is not permitted by the law.”²⁸ The article further references to Francesco Palermo, a former senator in Italy and human rights expert who has defended the rights of Roma.²⁹ Palermo opines that “it would be legally impossible to pursue the creation of an ethnic-specific census and expulsions as Salvini described, because the issue had already been taken up by Italian courts in the past, where it was rejected.”³⁰ He continued by saying that “the bigger problem was that the reaction to Salvini was generally positive, and that his popularity was growing despite the extreme nature of his positions. It is very simple and very scary. Except for intellectuals and certain journalists, most people would say there is nothing wrong with this, and that is the tricky point. Salvini knows this. It is a just a means to get political support.”³¹

Should this issue ever come to light, I believe that the courts would analyze it against the dignity rights promised to the people of Italy through the ECHR and through the Italian constitution. Article 14 of the ECHR, which Italy has ratified, states that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.³² The article itself provides a basis

²⁸ <https://www.theguardian.com/world/2018/jun/19/italy-coalition-rift-roma-register-matteo-salvini>

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² https://www.echr.coe.int/Documents/Convention_ENG.pdf §14

for which the Roma population could appeal Mr. Salvini's actions as an attempt to discriminate against the Roma population and violate their right to be treated with human dignity.

To provide additional foundation for an argument against Mr. Salvini's want to conduct a racial census, we refer to Italy's Fundamental Principles, Article 3, which states that all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.³³ While this is the rights given to Italian citizens, and does not touch on the non-Italian Roma population, we can still use this foundation for the Roma who are able to. For the Non-Italian Roma, the ECHR provides a sound basis for complaint. The right to equal social dignity is expressly granted to all under the Italian Constitution and is to be respected by all, regardless of the individual's sex, race, language, religion, political opinion, or personal and social conditions. The right expressly states that equal social dignity, and therefore human dignity, is to be applied without distinction. By conducting a racially driven census with the sole purpose of identifying the amount and locations of one ethnicity, is a disregard for the constitution that Mr. Salvini is sworn to protect and uphold. In my opinion, the path that Mr. Salvini wants to take to segregate the Roma population from the rest of Italy is discriminate, un-ethical, and a violation of every Roma's human dignity that is promised to them by the ECHR and Italy's very own constitution.

³³ Italy Constitution https://www.constituteproject.org/constitution/Italy_2012.pdf?lang=en

D. SERBIA: PROTECTION OF MINORITY RIGHTS AIMING AT PRESERVING HUMAN DIGNITY; WELFARE FOR OVERCOMING SOCIAL EXISTENTIAL DIFFICULTIES.

Serbia is a country that implemented its constitution much later in their development as a country. The Serbian constitution was developed in 2006.³⁴ Since this constitution was developed during what I will consider the enlightened era of the rights to human dignity, the right is found throughout their constitution in many articles as listed below. I believe that Serbia has such a express right to human dignity as a part of their constitution due to the mass amount of human dignity violations that can be found through their historical war acts.

- Part 21 Article 19: Guarantees for inalienable human and minority rights in the Constitution have the purpose of preserving human dignity and exercising full freedom and equality of each individual in a just, open, and democratic society based on the principle of the rule of law.
- Part 22 Article 23: Dignity and free development of individual's human dignity is inviolable and everyone shall be obliged to respect and protect it.
- Part 22 Article 28: Persons deprived of liberty must be treated humanely and with respect to dignity of their person.
- Part 22 Article 69: Citizens and families that require welfare for the purpose of overcoming social and existential difficulties and creating conditions to provide subsistence, shall have the right to social protection the provision of which is based on social justice, humanity and respect of human dignity.
- Chapter 3 Part 1-16 Every person has a right to be treated with dignity worthy of a human being and not to be subjected to torture, cruel, inhuman or degrading treatment or punishment.

In addition to the articles within the constitution, much like the Albanian Constitution, it is written as part of the preamble which as I have previously opined, is part of the underlying principles behind the entire documents. The preamble reads:

³⁴ Serbia Constitution https://www.constituteproject.org/constitution/Serbia_2006?lang=en

- "SOLEMNLY DECLARING our unswaying commitment, during this our Third Republic, to ...
- uphold the rule of law based on the recognition of the fundamental human rights and freedoms enshrined in this Constitution and on respect for the equality and dignity of human beings;...
- RECOGNIZING the inherent dignity and the equal and inalienable rights of members of the human family as the foundation for freedom, justice, welfare, fraternity, peace and unity;"³⁵

Serbia shows a developed understanding of the right to human dignity through the case law and application of the constitution. In the matter of *Milanović v. Serbia*, Mr. Života Milanović was a leading member of the Vaishnava Hindu religious community in Serbia, otherwise known as Hare Krishna. Between September 2001 and June 2007, the Mr. Milanović was the victim to a series of physical attacks by unknown assailants which few required hospitalization. After each attack, Mr. Milanović reported the events to the police, insisting that they had been religiously-motivated hate crimes which he suspected were carried out by members of an extremist organization such as Srpski Vitezovi, a branch of the far-right organization Obraz.³⁶ After each complaint to the police, a cursory investigation was conducted and each time the investigation concluded with no material evidence or useful information to lead to the arrest of the alleged attackers. In 2005, Mr. Milanović, made a complaint to the Ministry of Internal Affairs that the police officers had not met the necessary diligence required to find his alleged attackers. Even though there was official recognition of the incident of racial and religious hate crimes to come

³⁵ https://www.constituteproject.org/constitution/Serbia_2006?lang=en

³⁶ MILANOVIĆ v. SERBIA (Application no. 44614/07), http://www.equalrightstrust.org/ertdocumentbank/Case%20report%20Milanovic%20v%20Serbia_Final.pdf

about from the two organizations in which Mr. Milanović claimed attacked him, the Serbian police still found doubt in the claims of Mr. Milanović's statements.

In their report of April 12, 2010, *inter alia*, the police noted that:

- (a) most of the attacks against the applicant had been reported around Vidovdan, a major orthodox religious holiday;
- (b) the applicant had subsequently publicized these incidents through the mass media and, whilst so doing, "emphasized" his own religious affiliation;
- (b) the nature of the applicant's injuries had been such that their self-infliction could not be excluded; and
- (d) the injuries had all been very shallow, which could be considered peculiar and would imply great skill on the part of the applicant's attackers who had never managed to hold him down but had "assailed him from a distance."³⁷

The appropriate courts considered these complaints and reports and ultimately found that the police were in violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 3 (prohibition of torture and inhuman treatment) of the ECHR adopted by Serbia in March of 2004. As discussed previously, the articles do not expressly state that dignity is the driving factor for these rights, but I find that it is implied because you are human you have the right to dignity and in providing these rights and protections to the citizens of the ratified countries, they are ensuring compliance with the individual's right to human dignity.

The Roma population in Serbia is suffering, much like the populations in the other countries mention herein. The Roma minority is subject to many forms of discrimination and deprivation in Serbia as shown through the following:

- Over 60% of Roma population are unemployed;

³⁷ Id.

- Nearly two-thirds of the Roma population in Serbia live in an area that lacks safe drinking water;
- Three quarters of the Roma population in Serbia live without any sewage system;
- One-in-four Roma's does not have access to electricity;
- Majority of the Roma population lack adequate education, and majority drop out before completing a high school level of education.³⁸

The Roma population is thought to make up around 2% of the Serbian population; however, the numbers are believed to be much higher than this as the Roma people, as part of their culture, tend to hide themselves from the census information and because of where they live, they are merely miscounted. “Today, people across the European continent continue to struggle with austerity and high levels of joblessness – and giving extra help to the Roma is widely unpopular. Life has become so bad for the Roma that the European Commission declared a continent-wide emergency. Doing more to boost the Roma is a daunting task for countries like Serbia – yet it is a task that must be vigorously addressed if Serbia wants to attain full membership in the European Union.”³⁹

The Roma people are provided with the same protections and rights as any other citizen of Serbia through the ECHR and the Serbian constitution, even though the Roma are small in comparison to the remaining Serbian population. In article titled “Separate, But Still Equal”⁴⁰ from 2008, the case of *Orsus and others v. Croatia*⁴¹ is discussed for its challenge against the

³⁸ <https://scholars.org/brief/hard-life-roma-people-serbia>

³⁹ Id.

⁴⁰ <https://echrblog.blogspot.com/2008/07/separate-but-still-equal.html>

⁴¹ *See*, *Orsus and others v. Croatia* <http://www.refworld.org/pdfid/4ba208fc2.pdf>

Croatian government for its separation of Roma children into different primary school classes than the remaining population of the school. The Roma children argued that this was discrimination based on their racial and ethnic origin and a violation of Article 14 of the ECHR. Additionally, through the alleged discrimination the Roma children were exposed to less curriculum which they claimed was a violation of their right to an education under Article 2 of the ECHR. The Croatian government defended themselves by claiming that “there was no discrimination of Roma children and that pupils enrolled in school were all treated equally. They submitted that all pupils were enrolled in school after a committee (composed of a physician, a psychologist, a school counsellor (pedagog), a defectologist and a teacher) had given an opinion that the candidates were physically and mentally ready to attend school. The classes within a school were formed depending on the needs of the class, the number of pupils, etc. In particular, it was important that classes were formed in such a way that they enabled all pupils to study in a stimulating environment.”⁴² The government further claimed that the Roma children who were segregated was not done so because of race, but rather because they did not speak the Croatian language and this allowed for those children to gain additional assistance with the same curriculum.

The case was brought forth to the ECHR for a first impression analysis. The courts ultimately decided that there was no violation of the Roma’s rights in this instance, however, their written opinion provides great insight into how the courts treat the right to education (Article 2) and the right against discrimination (Article 14). Below are applicable sections to the matters at issue of the first instance court’s opinion.

⁴² *Id.*

“The first-instance court established in the impugned judgment that the criteria for formation of classes in the defendant primary schools had been knowledge of the Croatian language and not the pupils' ethnic origin. The [first-instance] court considered that the complainants had failed to prove their assertion that they had been placed in their classes on the basis of their racial and ethnic origin.”⁴³

“The first-instance court relied on section 27 paragraph 1 of the Primary Education Act ... which provides that teaching in primary schools is in the Croatian language and Latin script, and considered lack of knowledge of the Croatian language as an objective impediment in complying with the requirements of the school curriculum, which also transpires from the conclusion of a study carried out for the needs of the Croatian Helsinki Committee.”⁴⁴

“The first-instance court found that the defendants had not acted against the law in that they had not changed the composition of classes once established, as only in exceptional situations was the transfer of pupils from one class to another allowed. The [first-instance] court considered that this practice respected the integrity of a class and its unity in the upper grades.”⁴⁵

The courts show here that the application of a violation of Article 2⁴⁶ and 14⁴⁷ is held at a higher standard than that the children were able to assert through their claims. Though the articles do not expressly state that human dignity is an underlying principle, it is shown through the discussion of the courts in that they want to protect the individual's rights and therefore their

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.” Article 2 ECHR

⁴⁷ “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Article 14 ECHR

human dignity which is a basis for all rights given. They show this by explaining their considerations and showing what factors they analyzed in their decision-making process.

IV. CONCLUSION

The right to human dignity is an ever-evolving legal concept that has made its way into multiple constitutions throughout the Adriatic-Ionian region, including the countries discussed herein. As the right to human dignity is both a historical value and a somewhat newly recognized right, it is hard to predict the direction the courts will take with individual challenges as they arise, such as the rights of the Roma population, the rights against inhumane treatment, and the rights to religious freedom. The case law throughout this paper strongly demonstrates that each court takes each individual set of facts and applies the totality of the circumstances to their analysis of the underlying article when it is applied through either the constitution of that country or the ECHR as ratified. The question is whether each court takes dignity solemnly under its own constitution or under the ECHR and what specific claims are most likely to be successful. It is only a question that can be answered through future jurisprudence and developing rights with accountability superimposed by vigilant ECHR oversight.