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**ASPECTS OF THE JOURNEY OF
HUMAN DIGNITY IN ALBANIAN
JURISPRUDENCE**

*THE LIMITS OF HUMAN RIGHTS.
DIALOGUE BETWEEN OBLIGATIONS
AND FREEDOM*

*ALBANIAN SECTION: CHALLENGES
AND GUARANTEES OF HUMAN
RIGHTS: ALBANIAN AND GLOBAL
PERSPECTIVES*

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ABSTRACT

Human dignity, as an integral component of Human Rights, is an element that has not been addressed as extensively as other aspects, such as life, liberty, security, due process of law, and so forth. Nevertheless, it has always been, and continues to be, one of the pillars that firmly support and uphold the stability of the human condition.

Let us first examine the meaning and certain elements of human dignity, as understood and agreed upon by the majority of humankind in relation to its theoretical, practical, and legal treatment.

THE MEANING OF HUMAN DIGNITY

Human dignity is a fundamental concept in philosophy, ethics, and human rights. It signifies the respect for and the undeniable worth of every individual, regardless of gender, race, nationality, religion, or any other distinction. This concept is grounded in the idea that every human being possesses an inherent and inalienable value that guarantees equal rights and respect.

On a moral level, human dignity refers to the unquestionable honor of the human being, which can never be lost, regardless of living conditions or one's actions. This concept has acquired great importance in international norms and laws, beginning with the *Universal Declaration of Human Rights*, which affirms that all people have the right to live in dignity and without discrimination.

Human dignity is a value that underscores the principle that no individual should be treated as a mere means, but rather as a being of immeasurable worth, endowed with independent rights and deserving of treatment with respect and integrity.

ELEMENTS OF HUMAN DIGNITY

Human dignity is a fundamental concept that recognizes the inherent value of every person. It constitutes a cornerstone of human rights and ethical frameworks worldwide. The principal elements of human dignity include:

1. **Inherent Value** – Every individual possesses intrinsic worth simply by virtue of being human. This value is not contingent upon external factors such as wealth, social status, or abilities.
2. **Respect and Recognition** – People deserve to be treated with respect and to be appreciated for their individuality and unique contributions. This includes acknowledging their rights, beliefs, and personal identity.
3. **Autonomy and Freedom** – Individuals have the right to make their own choices and decisions regarding their lives. This encompasses the freedom to pursue their goals, express their opinions, and live in accordance with their values and beliefs.
4. **Equality** – Human dignity incorporates the principle of equality, meaning that all individuals should be treated as equals and have equal access to opportunities and resources. Discrimination or prejudice based on race, gender, religion, or other characteristics undermines human dignity.
5. **Compassion and Empathy** – Demonstrating compassion and empathy toward others is a vital aspect of human dignity. It involves understanding and appreciating the experiences, feelings, and needs of others. The concept of empathy will be addressed in greater detail below.
6. **Security** – Ensuring that individuals feel safe and protected is essential for preserving human dignity. This includes safeguarding people from harm, violence, and abuse, as well as guaranteeing access to basic needs such as food, shelter, and healthcare.
7. **Community and Belonging** – Being part of a supportive community and having a sense of belonging are important for human dignity. This entails fostering social connections and ensuring that individuals feel included and valued within their communities.

Together, these elements form the foundation of human dignity and contribute to the creation of a just and humane society in which every person is valued and respected.

In Albania, references to human dignity run deep in its history – the history of a people who have been continuously attacked and occupied, yet never surrendered.

The world has witnessed two unique examples of the Albanian expression of human dignity.

Mother Teresa is the Albanian woman known worldwide for her unparalleled commitment to recognizing the intrinsic worth of every person. She helped people regardless of their wealth, status, or abilities. She demonstrated compassion and empathy, treating everyone equally. All of these qualities embody what are known as the elements of human dignity.

Another significant reference comes from **the Second World War**. Albania is globally recognized as the only country where not a single Jew was surrendered to the Nazis. In fact, it is a documented fact that the number of Jews in Albania at the end of the war was greater than at its outset.

LEGISLATION

In order to protect human dignity, humanity has adopted a legal framework, both at the national and international levels. While the laws safeguarding human dignity vary from one country to another, there are certain international standards and key documents that play a significant role in its protection.

Some important examples of international instruments include:

1. **The Universal Declaration of Human Rights** (1948) – the foundational document of the United Nations, containing general principles for the protection of human rights and human dignity.
2. **The European Convention on Human Rights** (1950) – a crucial treaty for European countries, guaranteeing the protection of human rights and dignity. Member states of the Council of Europe are obligated

to respect the human rights and dignity of individuals. The European Court of Human Rights in Strasbourg monitors and enforces these standards.

3. **The International Covenant on Civil and Political Rights** (1966) – another United Nations treaty that provides significant protections for human rights and dignity.
4. **The Charter of Fundamental Rights of the European Union** (2000) – guarantees the fundamental rights and dignity of EU citizens.

These acts and instruments are only a few among many that contribute to the protection of human dignity at both international and national levels.

IN DIFFERENT COUNTRIES

The protection and implementation of human dignity is a complex and multifaceted matter; however, its importance is universally acknowledged.

At the national level, states have adopted domestic legislation – beginning with constitutions, followed by statutory laws, and extending to other subordinate acts.

Human dignity is implemented in different ways across countries, yet certain fundamental principles are universal and shared among many jurisdictions. Below are several examples of how different countries implement and safeguard human dignity:

In the **United States**, the Constitution and its Amendments (such as the First and the Fourteenth) protect individual rights and dignity. The courts play an essential role in interpreting these rights and ensuring due process for all citizens. *Civil Rights Acts* (such as that of 1964 and others) prohibit discrimination and protect the dignity of individuals.

Canada has the *Canadian Charter of Rights and Freedoms*, which guarantees the fundamental rights of all its citizens and residents. This includes the right to equal and fair treatment before the law.

The **Constitution of South Africa** is renowned for its strong protection of human rights and dignity. It contains specific clauses that guarantee individual rights and prohibit any form of discrimination.

In **Japan**, human dignity is safeguarded by the national Constitution, which guarantees fundamental human rights and the fair treatment of all citizens.

In **Italy**, Article 3 of the Italian Constitution stipulates that: *All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, or personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which, by limiting in fact the freedom and equality of citizens, prevent the full development of the human person and the effective participation of all workers in the political, economic, and social organization of the country.*

IN THE JUDICIARY

Human dignity is one of the fundamental elements of justice and human rights. In the context of the judiciary, it is essential that all judicial proceedings respect and protect the dignity of the person. This includes:

1. **Presumption of Innocence** – Every person is considered innocent until proven otherwise.
2. **Rights of the Accused** – Guaranteeing a fair and equal trial, including the right to legal defense.
3. **Dignified Treatment** – All individuals must be treated with respect and dignity, regardless of the charges against them.
4. **Privacy and Confidentiality** – Preserving individuals' privacy and treating personal information with confidentiality.
5. Indeed, the respect for human dignity forms the very foundation upon which a fair and accountable justice system is built.

IN ALBANIAN CULTURE

In Albanian culture, human dignity is a core value closely tied to honor, respect, and the esteem that an individual has for themselves and for others. For Albanians, dignity is often connected to moral and ethical principles rooted in traditions and values passed down from generation to generation.

In a broader context, human dignity among Albanians can be understood as an effort to protect and preserve personal values, as well as to treat others with respect and honor. This may relate to respecting individuals' rights, conducting oneself with integrity, and, in general, maintaining an honorable image of oneself and one's fellow citizens.

References to human dignity in Albania reach deep into the nation's history.

In many cases, human dignity in Albanian culture is a factor influencing social relationships and interactions between individuals, while also exerting a powerful influence on the building of trust and mutual respect.

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If we were to address all the elements of human dignity in the judiciary, it would require a doctoral dissertation; therefore, within the scope of this event, we cannot examine them in detail, but can only list them. Nevertheless, drawing from the Albanian experience, I will outline below the constitutional and legal framework, providing several examples from both customary law (*Kanun*) and modern law (criminal law – substantive and procedural).

It is worth noting that, in their history, Albanians have also been known for applying a special form of law – customary law. Albanian customary law is a legal system that was used for several centuries. It encompassed norms regulating the functioning of society, primarily in the country's mountainous regions. These norms were unwritten but were transmitted orally from generation to generation and were rigorously applied. Collectively, these norms formed what is known as the *Kanun*, which also influenced the development of Albanian statutory law. Several *Kanuns* existed, such as the *Kanun of Lekë Dukagjini*, the *Kanun of the Highlands (Luma)*, the *Kanun of Skanderbeg*, the *Kanun of Arbër*, and the *Kanun of Labëria*, among others. During periods

of foreign occupation – particularly the Ottoman – the Albanian *Kanuns* served as the principal source of local law.

The most renowned of these is the *Kanun of Lekë Dukagjini*. It was established in the 15th century by a prince and prominent figure in Albanian territories, especially in the mountainous areas of Northern Albania and Kosovo. However, many of its rules predated him and were only later codified and disseminated. This code was a compilation of rules and customs containing the traditional norms governing the social, economic, and legal life of Albanians in the absence of a strong state authority. It emphasized numerous values and principles essential to daily life, one of the most important being human dignity. The *Kanun* functioned in oral form until it was collected, codified, and published in written form in 1933 by a cleric named Shtjefën Gjeçovi.

In 1942, one of Albania's distinguished intellectuals, Ernest Koliqi, prepared a study presented in the form of a lecture entitled *The Law of the Albanian Kanun and Roman Law*, which reflected the connection between the two legal traditions. This study was published in 1943 in the journal *Studies and Legal Texts*, no. 1, which appeared bilingually (*Albanian and Italian*). The *Kanun of Lekë Dukagjini* has been translated, studied, commented upon, and valued as a historical-legal monument by numerous foreign scholars.

The *Kanun* contains rules encompassing various aspects of life, such as:

- **Family and Marriage** – Regulations concerning roles within the family, marriage arrangements, and the status of women and men.
- **Property, Inheritance, and Land** – Rules governing property relations, division, and inheritance.
- **Besa (Pledge of Honor) and Honor** – The importance of preserving honor and the means of restoring it when violated.
- **Guest and Hospitality** – The significance of hospitality and respect toward guests.
- **Judgment and Punishment** – Procedures for adjudication and enforcement of sanctions.
- **Blood Feud (*in Albanian – Gjakmarrja*)** – Rules for resolving conflicts and pursuing justice according to customary law.

According to the *Kanun*, human dignity is concerned with preserving the honor and personal and family esteem of the individual. In general, human dignity in the Albanian *Kanun* is closely linked to the concepts of honor (*in Albanian* – nder), pledge of faith (*in Albanian* – besa), and social responsibility, placing the individual in a strong relationship with the norms and traditions of the community.

Some important aspects of human dignity according to the *Kanun* include:

1. **The Honor of the Individual and the Family** – The *Kanun* required individuals to preserve their own honor and that of their family. Honor was considered a valuable asset, and any action that harmed it could lead to blood feud or conflict. Human dignity was closely tied to safeguarding this honor and to the respect that had to be shown toward it.
2. **Besa and the Given Word** – Loyalty and keeping one's promise were essential for maintaining dignity. In the *Kanun*, a pledged word carried great value, and anyone who broke it would lose their honor and dignity. *Besa* and loyalty were fundamental for the preservation of human dignity.
3. **Responsibility toward Family and Community** – An individual's honor was also connected to the responsibilities they bore toward their family and community. One was expected to act with integrity and to respect societal norms in order to maintain a good and dignified image for oneself and one's family.
4. **Protection of Dignity through Retribution** – The Albanian *Kanun* contained a well-known rule of blood feud, which could occur in cases of harm to the honor or dignity of an individual or family. In this sense, dignity had a strong dimension of defending and safeguarding both personal and collective honor.

However, this treatment differs markedly from the modern understanding of human dignity as it is recognized today in international law.

As a *conclusion*, the *Kanun of Lekë Dukagjini* addresses human dignity through the lens of *collective honor*, *social hierarchy*, and *retributive justice*,

rather than through the framework of individual rights. While certain elements – such as *besa* and hospitality – align with universal principles of dignity, most of its norms conflict with modern human rights standards, particularly in relation to gender equality and personal liberty.

The study of the *Kanun* serves as a reminder that *dignity* is a concept sensitive to cultural context, and that its evolution depends on the social and legal development of a society.

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In Albania, the Constitution and the legislation in force protect the dignity of individuals and guarantee fundamental human rights. Various institutions, such as the Ombudsman and the Commissioners for Protection from Discrimination and for the Protection of Personal Data, play a key role in safeguarding these rights.

1. ***The Constitution of the Republic of Albania*** – The Constitution guarantees the fundamental rights and freedoms of individuals, including the protection of human dignity.
2. ***The Law on the Ombudsman*** – This law establishes the institution of the Ombudsman, whose role is to protect and promote human rights and dignity.

The Preamble to the Constitution of the Republic of Albania states:

We, the people of Albania, proud and aware of our history, responsible for the future, with faith in God and/or in other universal values, with the determination to build a state governed by the rule of law, democratic and social, to guarantee the fundamental human rights and freedoms, in the spirit of tolerance and religious coexistence, with the pledge to protect human dignity and personality, as well as for the prosperity of the entire nation, for peace, well-being, culture, and social solidarity, with the centuries-old aspiration of the Albanian people for identity and national unity, with the deep conviction that justice, peace, harmony, and cooperation among nations are among the highest values of humanity, ...

Furthermore, Article 3 of the Constitution provides:

The independence of the state and the integrity of its territory, human dignity, rights and freedoms, social justice, constitutional order, pluralism, national identity and heritage, religious coexistence, as well as the coexistence and understanding of Albanians with minorities, constitute the foundation of this state, which is obliged to respect and protect them.

The Criminal Code of the Republic of Albania contains provisions that penalize actions which harm the dignity of individuals, such as torture, inhuman and degrading treatment.

In the Albanian Criminal Code, Chapter II of the Special Part includes a Section (No. 7) entitled *Criminal Offences against Morality and Dignity*, which criminalizes, among others: Prostitution (Articles 113–115), Pornography (Article 117), Insult (Article 119), Defamation (Article 120), Distribution of racist or xenophobic materials via computer systems (Article 119/a), Racist or xenophobic insults via computer systems (Article 119/b), Unlawful interference in private life (Article 121), Stalking (Article 121/a), Disclosure of personal secrets (Article 122), and Obstruction or concealment of the confidentiality of correspondence (Article 123).

In the current Criminal Code, there are two specific provisions, especially regarding serious criminal offences, which, of course, include murder. Revenge and blood feud:

Revenge – Article 78, paragraph 2: sentenced not less than 20 years' imprisonment or life imprisonment.

Blood feud – provided as an aggravated circumstance of murder, for which the perpetrator is sentenced with not less than 30 years' imprisonment or life imprisonment. This provision was introduced because blood feud has been a deep wound in Albanian society.

It is a practice that has left serious consequences on Albanian society, leading to isolation and fear for many families. Although modern law criminalizes blood feuds, there are still rare cases where they occur.

The Albanian Code of Criminal Procedure – Articles 158 and 159 – *Exceptions from the obligation to testify and Preservation of professional secrecy.*

For the audience, the atrocities of the dictatorship are well known. One of these atrocities was the attack on and destruction of human dignity. In Albania, during the dictatorship, people were sentenced for what they said, even based on statements from their own relatives (agitation and propaganda against the state and the ruling party). Through the use of violence, even members of the same family were forced to testify against each other.

With the change of the political system, the Code of Criminal Procedure now contains the following references:

ARTICLE 158 EXCEPTIONS FROM THE OBLIGATION TO TESTIFY

(Amended point *a* by Law no. 8813, dated 13.6.2002; added point 1/1 and words in letter *c* of point 1 by Law no. 35/2017, dated 30.3.2017)

1. The following are not obliged to testify:
 - a. The spouse or close relative of the accused, according to the definitions of Article 16, except in cases where they have filed a complaint or appeal or when they or a close relative are victims of the criminal offence;
 - b. The spouse, regarding facts learned from the accused during their marital life;
 - c. The spouse separated from the accused, regarding facts learned from the accused during their marital life;
 - d. A person who, although not the spouse of the accused, cohabits or has cohabited with them;
 - e. A person related to the accused by adoption.

- 1/1. The exemption from the obligation to testify does not apply when the persons mentioned in paragraph 1 of this article have filed a complaint or appeal or when they or a member of their family is a victim of the criminal offence.
2. The court informs the aforementioned persons of their right not to testify and asks them whether they wish to exercise this right. Failure to comply with this rule renders the testimony invalid.

ARTICLE 159 PRESERVATION OF PROFESSIONAL SECRECY

1. Persons cannot be compelled to testify about information acquired due to their profession, except in cases where they have the obligation to report it to procedural authorities:
 - a. Representatives of religious confessions whose statutes do not contradict the Albanian legal order;
 - b. Lawyers, legal representatives, and notaries;
 - c. Doctors, surgeons, pharmacists, obstetricians, and anyone practicing a health profession;
 - d. Those exercising other professions recognized by law as having the right not to testify regarding matters related to professional secrecy.
2. When the court has reasons to doubt that the claim made by these persons to avoid testimony is unfounded, it orders the necessary verifications. If the claim is found baseless, the court orders the witness to testify.
3. The provisions in paragraphs 1 and 2 also apply to professional journalists concerning the names of persons from whom they have obtained information during their professional activity. However, when such data are essential to prove a criminal offence and the truthfulness of these data can only be established through identification of the source, the court orders the journalist to reveal the source of their information.

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I said at the beginning that I would return briefly to Empathy. As part of the sense of humanity, Empathy is a deontological duty, indeed it is a mandatory component of a judge's activity. In a document prepared by the European Network of Councils for the Judiciary (ENCJ), which outlines the deontological duties of judges, it is written that:

The sense of humanity in a judge is manifested through respect for persons and their dignity, in all circumstances of his professional and private life. ... Humanity, which implies sensitivity to the situations subject to his judgment, causes the judge to evaluate and consider the human dimension of his decisions. It is up to him, when assessing facts and at the decision-making stage, to find a balance between

empathy, compassion, understanding, punishment, and severity, so that the application of the law by him is recognized and understood as legitimate and fair.

In the basic principles of the Judicial Ethics Code, approved by the High Judicial Council by its Decision no. 171, dated 22.04.2021. But I also want to emphasize human values such as being sociable, open-minded, quick-witted, sincere, persistent, focused, contributive, kind, sensitive, and tolerant.

The judiciary, whether we like it or not, is part of life. It is part of human life! And magistrates have and must have a role not only professional but also human. In delivering justice, they must also show their human side.

Before starting their duties, magistrates solemnly swear that during the performance of their duties they will always remain loyal to the Constitution of the Republic of Albania, the laws in force, and will respect the rules of professional ethics.

Certainly, all elements of ethics/deontology are mandatory, but in this part, the term *empathy* caught my attention! Therefore, since ENCJ itself has defined it, I will continue a bit by briefly explaining what we understand by empathy and how empathy should function in judges.

Empathy is the ability to understand or feel what another person is experiencing; that is, the ability to put oneself in another's position. Definitions of empathy include a wide range of emotional states, and there are several types of empathy.

Next, the question arises whether empathy should exist and how it should function in judges? For example, empathy is essential for judges who deal with minors.

If we were to break down empathy into simple terms, it would be the ability to do three things in relation to another person:

1. To understand the emotional state of the other person. This is called emotional empathy.
2. To understand the motive behind the other person's behavior. This is called behavioral empathy.

3. To put yourself in the other person's place in order to better understand what they think and the process they use to act in certain ways. This is called cognitive empathy.

I know many judges would argue that the law and justice primarily require decision-making based on cold logic, not emotion. But personally, I argue the opposite: the judiciary needs empathetic judges! Judges need empathy to understand why people act in certain ways. It's not enough just to clarify and determine what happened, but also why it happened. Surely, someone might argue that empathy distances the judge from their role as the *sentencer* (*punisher*) of crime. But, is punishment without a comprehensive understanding of the defendant, the victim, and all the circumstances of the case truly what *good justice* proclaims?

On the other hand, let's admit that no matter how much a judge tries to operate solely on logic during their work, after all, a judge is still a human being. And as such, emotions are inevitable. Empathy, meaning putting oneself in another's position, would help the judge finally separate themselves from the personal emotional sensitivity related to many very human elements that a given case may contain. Numerous studies have shown that only through cultivated empathy can someone ultimately separate personal emotions, beliefs, and values from those of others. Only in this way will the person being judged be fully understood, and the decision-making will ultimately be the application of the law without any bias.

Instead of judges suppressing their empathy and the emotional sensitivity that comes with it, we need to make empathy an integral part of the legal decision-making process. Why not? Let's also articulate/talk about another type of empathy – legal or judicial empathy!

In countries with developed democracies, empathy in the judiciary has been treated with great attention. In the United States of America, President Obama has addressed this phenomenon more than once; both when he was a senator and after becoming president. He believes empathy is very important

for the Supreme Court, even publicly disagreeing with the Chief Justice John Roberts, whom he considered rigid or harsh regarding this important quality.

In the procedures for replacing judge Souter (during a brief press conference at the White House), while clarifying and specifying what he was looking for in a Supreme Court justice, President Obama placed empathy at the top of his list, telling Americans that he saw it as a quality of understanding and identifying with people's hopes and struggles, as an essential component for reaching fair decisions and outcomes. He emphasized that he was looking for *a sharp mind, independent and with a sense of compassion*, stating: *I am looking for someone who understands that justice is not like an abstract legal theory or a footnote in a casebook. It also has to do with how our laws affect the daily reality of people – how they live and care for their families, how safe they feel in their homes, and how welcome they are in their country.* (May 2009). The appointment of Justice Sonia Sotomayor (the first justice of Hispanic origin).

The fact that a judge must be independent is an axiom of the judiciary. Impartiality is one of the main pillars of the judiciary. The question I want to raise for discussion is: *What helps a judge to be impartial, and who ultimately determines whether the judge has succeeded in being impartial or not?* Although the thesis I intend to convey may provoke distrust, even opposition, I am confident that it would be worthwhile to explore this path – which would lead the judge towards impartiality in the most professional, rigorous, and at the same time, most humane way possible. I believe the only way to guarantee a judge's impartiality is through the cultivation of empathy. Indeed, I dare to propose that testing this ability becomes part of the qualification processes for judges.

I propose a thesis that would constitute a new milestone for the development of the Albanian judiciary: *For justice that is universally accepted, today we need to work in two directions: the empathetic capacity of judges and the legal training of the litigating parties. This way, we will ensure that the litigants behave as legally as possible, while the lawyers behave as humanely as possible!*