

The Companion to the European Convention on Human Rights

Edited by

Kushtrim Istrefi, Zane Ratniece and Krešimir Kamber



BRILL | NIJHOFF

LEIDEN | BOSTON

Contents

Contributors XIII

List of Abbreviations and Short Forms XXIII

- 1 Introduction: The Convention of Concepts and the Court as a Master of Conceptualisation 1
Kuštrim Istrefi, Zane Ratnicec and Kresimir Kamber
- 2 Democracy and the Rule of Law 6
Robert Spano
- 3 Entries 16
 - Absolute Rights 16
 - Abuse of Rights 20
 - Abuse of the Right of Application 23
 - Accessibility of Law 25
 - Access to a Court 28
 - Access to a Lawyer 34
 - Actio Popularis 37
 - Admissibility 43
 - Adversarial Hearing (Trial) 47
 - Advisory Opinion 49
 - Amnesties 53
 - Arbitrariness 55
 - Arguable Claim 60
 - Arrest 63
 - Arrest, Information on Reasons of 66
 - Assembly 70
 - Association 74
 - Autonomous Concept 78
 - Balancing of Rights 80
 - Best Interests of the Child 83
 - Beyond Reasonable Doubt 87
 - Bosporus Presumption 89
 - Burden of Proof 89
 - Chamber 93
 - Civil Right or Obligation, Civil 96
 - Civil Right or Obligation, Determination of 101

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: brill.com/brill-typeface.

ISBN 9789004541542 (hardback)
ISBN 9789004541559 (e-book)
DOI 10.1163/9789004541559

Copyright 2025 by Kuštrim Istrefi, Zane Ratnicec and Kresimir Kamber. Published by Koninklijke Brill BV, Plantijnstraat 2, 2321 JC Leiden, The Netherlands.
Koninklijke Brill BV incorporates the imprints Brill, Brill Nijhoff, Brill Schöningh, Brill Fink, Brill mentis, Brill Wageningen Academic, Vandenhoeck & Ruprecht, Böhlau and V&R unipress.
Koninklijke Brill BV reserves the right to protect this publication against unauthorized use. Requests for re-use and/or translations must be addressed to Koninklijke Brill BV via brill.com or copyright.com.
For more information: info@brill.com.

This book is printed on acid-free paper and produced in a sustainable manner.

Further reading

- Smet, S., "Freedom of Expression and the Right to Reputation: Human Rights in Conflict", 26(1) *American University International Law Review* 183 (2010).
- Aplin, T., Bosland, J., "The uncertain landscape of Article 8 ECHR: the protection of reputation as a fundamental human right?" in: Kenyon, A.T. (ed.), *Comparative Defamation and Privacy Law* (Cambridge 2016), pp. 265–290.

Human Dignity

Paulo Pinto de Albuquerque and Pinar Ölçer

While human dignity features prominently in a vast array of national and international sources [see extensively, McCrudden, C., "Human Dignity and Judicial Interpretation of Human Rights", 19 *EJIL* 664 (2008)], the Convention makes no mention of it, barring one reference, introduced in 2002, in the Preamble to Protocol no. 13, abolishing the death penalty in all circumstances. The notion has, however, been richly assimilated in the Court's case-law, also prior to 2002, in a broad range of contexts. Articles 3 and 8 being the main locales in which the dignity of individuals is deployed [*Lacatus v. Switzerland*, no. 14065/15, 19 January 2021, para. 56], the notion also appears in the Court's case-law with respect to Articles 2, 5, 6, 7, 9, 10, 14. Article 1 of Protocol no. 1, Article 4 of Protocol no. 7 and Article 2 of Protocol no. 1 [see Fikfak, V., Izvorova, L., "Language and Persuasion: Human Dignity at the European Court of Human Rights", 22 *HRLR* 1 (2022), p. 7], as well as Article 4 ECHR.

Human dignity appeared in a variety of contexts in early Commission's decisions, being raised in minority opinions or through applicants' invocations (left without response). In 1973, in *East African Asians v. the United Kingdom* [nos. 4403/70 et al., Commission report, 14 December 1973], the Commission not only engaged with the notion for the first time, but also pivoted the violation established on it, using it to circumscribe the level of severity required to attract the applicability of Article 3 (being "interferences with the dignity of man of a particularly serious nature", importantly identifying "differential treatment on the basis of race" as a potential "special form of affront" thereto). The Court first deployed the notion in its judgment in *Tyrer v. the United Kingdom*, also in the context of Article 3, in relation to judicial corporal punishment, finding that "although the applicant did not suffer any severe or long-lasting physical effects, his punishment – whereby he was treated as an object in the power of the authorities – constituted an assault on precisely that which it is one of the main purposes of Article 3 to

protect, namely a person's dignity and physical integrity" [no. 5856/72, 25 April 1978, para. 33].

The Court never having provided an (integrated) definition of "human dignity" as it understands it to reside within the Convention, different aspects of the notion become circumscribed as it is tailored to different (aspects of) Convention rights. Its full connotation within the ECHR is as such to be derived in the totality of its diverse applications.

The Court likewise does not explain the rationale underlying its use of the notion. The manner in which the Court deploys it comports well with the "multi-faceted approach to the role of dignity" in general judicial usage [McCrudden 2008, p. 681]. As such, in the Court's case-law, dignity can feature, in variable weightiness, as a minimum core of (particularly certain) rights not susceptible to restriction or requiring action or a principle informing appraisal, alongside and interacting with other core Convention values and concepts, notably, equality, autonomy, and vulnerability [in the latter respect, see Zimmermann, N., *La notion de vulnérabilité dans la jurisprudence de la Cour européenne des droits de l'homme: Contours et utilité d'un concept en vogue* (Zürich 2022)].

Concretely within ECtHR adjudication, dignity can feature in the determination of the scope of rights and in the assessment of compliance with limitation requirements and standards, in the framework of both negative and positive obligations [see *Lacatus*, for multiple deployment in the determination of the margin of appreciation of the State with respect to criminalisation of begging, in light of a "certain trend towards limiting its prohibition", paras 103–106; in the determination of the scope of rights, the Court holding that the applicant had the right, inherent in human dignity, to be able to convey her plight and attempt to meet her basic needs through begging", para. 107; and in the final determination of (the proportionality of) measures taken against her, establishing a violation of Article 8, para. 115; see: **Proportional**]. Typically, it will be the dignity of applicants which is at issue, while the dignity of others can have relevance as a justification for restrictions of rights [see: **Legitimate Aim; Necessary in a Democratic Society**] or (with non-derogable rights) findings of non-violation. As such, the Court may refer to the dignity of victims of horizontal rights violations (alleged to have been perpetrated by applicants, in the assessment of complaints of the latter of violation of negative obligations [see: **Negative Obligation**]. In *s.w. v. the United Kingdom* and *c.r. v. the United Kingdom*, the Court in part parried the applicants' complaints of violation of Article 7 for their convictions for marital rape (claiming immunity under national law as it held at that time), through recourse to the notion, holding that marital immunity would "above