

## Research in Social Change

BUILDING A QUALITATIVE RESEARCH FRAMEWORK FOR RESEARCHING HOW HUMAN DIGNITY IS REALISED IN JUDICIAL PROCEEDINGS<sup>†</sup>

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## Abstract

*The relationship between the judge and the parties to judicial proceedings must entail communication, including appropriate reactions, during the proceedings and be balanced and respectful, despite different views being held. Irrespective of a judge disagreeing with the parties and any actions by the parties in breach of the law, the judge is supposed to provide the parties with a genuine sense of respect. Judges thereby help realise the human dignity of the individuals involved in judicial proceedings. However, the abstract nature of the concept of human dignity means empirical research on the realisation of human dignity remains modest at the scientific level. This article builds a research framework for researching the ways in which the human dignity of an individual (more specifically, the accused person) is realised in the vertical relationships (judicial authority–individual) during criminal proceedings. In this respect, the article opens the door for future empirical research on the realisation of human dignity.*

## Keywords

judicial proceedings • human dignity • criminal matters • accused person • judge

## 1. Introduction

This article focusses on research concerned with the realisation of human dignity in connection to the 'judicial authority–individual' relationship, i.e. vertical relationships. Since the normative architecture of democracy derives from the concept of human dignity, the institutions in this precise political setting (notably the judicial system) are designed to protect the dignity of members of society. The relationship between the institutional system and the cultural platform of society is thus mutually reinforcing (Kleindienst and Tomšič 2022). As regards the vertical relationships characterising the individual encounters, it is highly relevant that courts determine the boundaries of admissible conduct by state authorities through decisions that take into consideration 'the specific circumstances of individual

cases' (Constitutional Court of the Republic of Slovenia [CC RS], U-I-109/10, No. 11). Another question arises concerning how the courts act and perform while making decisions relative to the dignity of an individual participant in judicial proceedings. The judicial branch of power, as an actor judging violations of human dignity, should be particularly careful to not violate the dignity of individuals with its own actions and articulations during court proceedings. In constitutional democracy, a person should be treated as a subject, not an object, of authority, while an individual's (self-)realisation should be the fundamental purpose of democratic regulation governed by the rule of law. Such regulation is in line with Kant's practical imperative: 'Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end' (Kant 1785, 4:429).

The question of determining the extent to which human dignity is realised is still relatively unexplored at the scientific level; namely, a measurement instrument for gauging the level of realisation of dignity is missing. Certain attempts to introduce such an instrument have emerged in the field of

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healthcare, in particular nursing care and ethics, as well as in the field of migration. These fields do not provide a holistic approach to measurements of the realisation of human dignity. Further, the absence of an instrument to measure human dignity in many other relevant spheres of human life is also apparent, especially in the vertical relationships of the individual, and more specifically, in the relationship between the judicial branch of authority and an individual. A measurement instrument of this kind is indispensable in the context of democratic societies, that (1) aims to provide not only formal democracy but substantive (constitutional) democracy as well, where the latter is underlined by human dignity at its very origin, while simultaneously returning to human dignity as the goal of its functioning; and (2) in terms of providing the formal and substantive elements of the rule of law, is inextricably linked to a 'truly democratic state'.

The main objective of this article is to build a framework for a qualitative research study regarding human dignity as perceived by individuals in judicial proceedings. For this purpose, a transdisciplinary approach is adopted, with the mentioned objective being pursued by reliance on two research methods:

- a review of research on perceptions of realised human dignity along with research on the measurement of dignity in various fields (medicine, nursing, ethics, etc.); and
- analysis of the legislation and jurisprudence on claims of violations of human dignity, with an emphasis on the judicial authority–individual relationship while considering Slovenian jurisprudence.

The case study of Slovenia, as one of the 'new democracies', is valuable in that it demonstrates the relevance of the institutionalisation of human dignity in post-communist democracies. The advanced institutionalisation of well-interpreted human dignity fosters consistency in judicial decisions and both steadiness and reliability in the exercise of democratic mechanisms. A good understanding of human dignity, substantiated with philosophical and legal clarifications, also enhances and stimulates a democratic political culture (Kleindienst and Tomšič 2022). Moreover, while building a framework for qualitative research of human dignity, it appears that further empirical research of human dignity is sorely needed. The absence of a measure of human dignity is chiefly due to the abstract nature of human dignity, an issue posing a major challenge in the area of empirical research. In so doing, human dignity must be translated into a language that permits the use of social science research methods, meaning that it must be largely understood by research participants with a view to ensuring the reliability of research results. While designing such research, it has to be considered that the realisation of human dignity is inevitably interwoven with the experience or perception of a given individual.

Building on the approach described above, the article aims to identify the main indicators of the realisation of individuals' human dignity in vertical relationships (judicial authority–individual). According to the detected indicators, the key applied result of the presented research refers to the qualitative research framework that creates a range of opportunities for future qualitative research in this field.

## 2. Human Dignity

Human dignity as a foundation of democratic political culture is reflected in legal documents found at international, regional and national levels. After 1945, human dignity started to be mentioned ever more often in international and humanitarian legal documents (Chalmers and Ida 2007; Kleindienst and Tomšič 2022). Human dignity is not perceived (at least from a legal perspective) to be a human right in itself, but more as a concept representing the foundation for all human rights. It belongs to all people to an equal extent for the simple reason that they are human beings; irrespective of whether they have acted in line with or against the law, are children or elderly, foreigners or citizens, they are all endowed with the same extent of inherent human dignity (Kleindienst and Tomšič 2022). Scientific findings (Sensen 2011; Formosa and Mackenzie 2014; Kleindienst 2017, 2019; Kleindienst and Tomšič 2022) show that human dignity may be seen as a concept with two core dimensions: (1) initial dignity and (2) realised dignity. Article 1 of the Constitution of the Republic of Slovenia (CRS) defines Slovenia as a democratic republic and covers the substance of initial dignity, although this can only be inferred based on jurisprudence regarding the CC RS (U-I-109/10) because Article 1 does not expressly mention human dignity. Initial dignity implies the status of human absolute intrinsic value that pertains to a human being by the mere fact that they are *homo sapiens*. It stems from human nature as such and distinguishes humans from the members of other species, leading to it being referred to as a 'constitutive element' of a human. Initial dignity is inalienable and absolute, meaning that it cannot be taken away (Kleindienst 2017). Initial dignity is thereby not merely a constitutional principle in that it is constituted by the Constitution, but it is also a constituent principle of the Constitution itself (Lembcke 2013). Still, realised dignity is directly protected (at least) in Articles 21 (protection of human personality and dignity) and 34 (right to personal dignity and security) of the CRS, which explicitly mention human dignity. Through these two provisions, human dignity is normatively expressed and concretised. Realised dignity is a dimension of human dignity that states the extent to which human dignity has been assured in the case of a particular individual. Hence, while every human being is born with initial dignity, they do not necessarily simultaneously

enjoy realised dignity. In contrast to initial dignity, realised dignity is precarious and unstable (it might only be temporary) and can have different levels. When it is said that someone has lost their dignity, one is in fact referring to realised dignity (Kleindienst 2017; Avbelj et al. 2019).

This article only considers realised dignity seen as the manifestation of a person's relationship with themselves and their fellow humans (and *vice versa*). While Article 34 of the CRS prescribes the general protection of personal (realised) dignity and security, Article 21 is a more specific provision (Šturm 2002) on the protection of the human personality and an individual's (realised) dignity in criminal and all other legal proceedings, together with during the deprivation of liberty and enforcement of punitive sanctions. The focus here is on Article 21, which in particular is said to protect an individual in vertical relationships, as in 'to protect individuals from the interference of the state or public officials' (CC RS, Up-555/03, Up-827/04, No. 23) that affects their personality and dignity. The negative obligations of the state and branches of authority (legislative, executive, judicial) on one hand derive from Article 21; thus, the state should refrain from interfering in human personality and dignity while, on the other, positive obligations arise from Article 21; namely, the state or branches of power should conduct their activities to ensure the protection of human personality and dignity (CC RS, Up-555/03, Up-827/04, No. 25).

### 3. Review of Research on Perceptions of Realised Human Dignity and Measurement of Dignity

Research involving the measurement of dignity appears in the fields of medicine, nursing and ethics. Chilton (2006), for example, studied how breaches of human dignity cause poor health, relating human dignity violations to indicators such as violence (both gender-based and youth violence), low socioeconomic status and discrimination. However, while measurements of dignity in the field of medicine and health are relatively common compared with other fields, overall such measurements are still underexplored. Mann (1998) argued that the concept of dignity lies on the frontier of an unexplored area of public health. Khatib and Armenian (2012) also establish a correlation between human dignity and health. They assess dignity using an instrument comprising four themes: autonomy (independence, control, ability to make one's own decisions, and functional capacity), self-respect (respect for both oneself and for others – self-respect includes being responsible and reliable, a trait that makes a person respected by others), worthiness (ability to feel important and valuable relative to others, communicate this to others and be treated as such by others) and self-esteem (internally held qualities that may be based on personal

characteristics, attributes or an acquired world view, including continuity of self, role preservation, legacy, maintenance of pride, hopefulness, a fighting spirit and other qualities that maintain one's self-respect). An instrument for measuring human dignity in the field of health was also developed by Wiegman (2003). Wiegman's results suggest that younger individuals have a more intact sense of dignity. Subjects who had had a recent or chronic illness scored significantly lower for dignity than those who had not. There was no difference in dignity levels by ethnicity, gender or occupation (Wiegman 2003). For the purpose of determining the level of dignity in the field of nursing, Dixon, Palfreyman and Shackley (2011) proposed questions on topics such as: the environment (safety, cleanliness, privacy, social inclusion, dignity of others); processes of care (communication with staff – being provided with information, listened to, involved in decision-making; attitudes of staff – respect, empathy, being treated as an individual; personal hygiene, appearance); and capabilities (autonomy/independence, control). Dixon, Palfreyman and Shackley (2011) found that when measuring human dignity in the field of nursing, authors consider very different topics associated with dignity:

- the Ipsos MORI research (2007) includes topics such as privacy, clean facilities, informed, single-sex, staff attitudes, gowns/nightwear, noise and toilets/washing;
- the research by Cass, Robbins and Richardson (2009) includes topics such as esteem, respect, self-respect, sense of identity, courtesy, communication, taking time, privacy, confidentiality, self-esteem, self-worth, identity, appearance, environment, being listened to, autonomy, information, social inclusion, hygiene, appearance, mealtimes, complaints, whistleblowing and abuse;
- the research by Haddock (1996) includes topics such as worth, esteem, self-respect, self-concept, self-confidence, self-control, control of the environment, pride of self, trustworthy, happy with self, humorous, autonomous, independent, private, positive self-identity, communication, behaviour, appearance, surroundings, comfortable with oneself, being treated by others, appreciation, caring, humanity and feel important and valuable;
- the research by Magee, Parsons and Askham (2009) includes topics such as personal hygiene, eating and nutrition, privacy, communication, pain, autonomy, personal care, end-of-life care, social inclusion, physical handling, staff attitudes, respect, inclusion, choice, control and facilities;
- the research by Baillie, Gallagher and Wainwright (2008) covers topics such as self-worth, worth of others, respect value, physical environment, organisational culture, attitudes and behaviours of staff in control, valued, confident, comfortable and decision-making;

- the research by the *Daily Mail* (2009) includes topics such as help from nurses, empathy from nurses, courtesy, respectful, valued as an individual, involved in decisions, eating, pain relief, hygiene, safe, secure and noticed;
- the research by Netten et al. (2009) includes topics such as sense of significance and personal worth; and
- the research by Beach et al. (2005) includes topics such as respect.

In other disciplines seeking to measure human dignity, the measurements are based on links to human rights or violations of them. The relevance of the link between human dignity and human rights is also shown by a number of constitutional provisions that are considered as indirectly protecting human dignity: for example, prohibition against torture, equality before the law and the integrity of human life, prohibition against inhuman or degrading treatment, protection of personal freedom, freedom of expression, freedom of conscience, freedom of assembly and association of work, right to social security, prohibition against conducting medical or other scientific experiments without the free consent of the persons involved, prohibition on violence against persons deprived of their liberty in any way, and prohibition on extortion of confessions and statements, as well as the rights of the inviolability of human personal integrity, privacy and personal rights, etc. (Grad and Kavčič 2007). When it comes to assessing the level of human dignity that is realised, a key role is often played by phenomena such as poverty, bonded labour, armed conflict, war and hunger, which all represent serious violations of human rights and hence of human dignity. Broadly speaking, the severity of the violation of human dignity may be measured by the level of risk or damage to life, liberty and the pursuit of happiness (Jacob 2017).

Researchers have made important attempts to develop tools and approaches for assessing human dignity breaches, including humiliation as a core determinant. If the right to be respected and treated in accordance with dignity is the entitlement of every individual, the lack of dignity constitutes a violation of an individual's entitlement. Research techniques and methods focus here on various forms and manifestations of insults, injustice, vulnerability and powerlessness (Jacob 2017). Human Dignity and Humiliation Studies (HDHS), an interdisciplinary global network, has developed a measurement tool for assessing the human rights situation using proxy sources (official data, laws, government reports, NGO reports, United Nations reports). The study presented here measures human dignity based on the following scale:

$$\text{Human dignity} = \text{human expression} - \text{human oppression}$$

The assumption made with this scale is that human beings have an opportunity to prevail despite hardship, oppression, deprivation and tragedy. The index of human dignity therefore consists of two sub-scales, one measuring the human rights deficit (oppression) and the other the human spirit (expression). In any case, the problem with such a measurement method is that the measurement of humiliation (and hence dignity) depends on human reactions that manifest in response to a lack of dignity. In the absence of such human reactions, human dignity measurements are likely to be subject to error (Jacob 2017). Shultziner (2007) questions whether a universal standardisation of human dignity is even possible.

#### 4. Determining Suitable Methodology for Measuring the Realisation of Human Dignity

It must be emphasised that the research topic is a particularly abstract field. Therefore, only qualitative research can lead to sufficiently in-depth findings. For example, if we ask an individual whether they feel their human dignity was violated in a given situation, it may occur that a lack of understanding of the 'human dignity' means that it is impossible to answer this question. Such a way of researching is problematic because the literature shows that people attach very different meanings to dignity. The abstract nature of the notion of human dignity makes it necessary to implicitly explore perceptions of violated human dignity. Accordingly, for the purposes of the research, a qualitative research method was chosen, since the difficulties described above can be reduced by helping participants answer various sub-questions that only indirectly imply dignity, but do not necessarily directly mention it. In this respect, the qualitative methods of research (Glaser and Strauss 1967; Denzin 1970; Strauss 1987; Mesec 1998; Ragin 2007) are needed to create a complete, detailed and content-rich picture of perceptions of human dignity having been violated in judicial proceedings in order to accomplish the research project's objectives. This approach, *inter alia*, requires the capturing of a wider spectrum of topics to enable a holistic and clarified picture while determining the indicators of perceived violated human dignity in judicial proceedings.

In the framework of qualitative research, semi-structured interviews are considered to be the most suitable research method. Given that the research aim was to obtain a holistic and in-depth picture of the investigated problem, the interview method was considered appropriate because it is one of the most common and powerful methods by which a researcher strives to understand an individual (Fontana and Frey 1994). More specifically, semi-structured interviews were conducted in order to cover the research topic as a whole. At the same time, the interviews were sufficiently (semi-)structured to

enable the inclusion of all necessary elements. On one side, the implementation of semi-structured interviews enables research to focus on previously drafted questions or themes (DiCicco-Bloom and Crabtree 2006) and to not divert from the essence of the research. On the other side, semi-structured interviews allow us not to be tied to the pre-arranged interview questions because questions could be omitted or added, also permitting additional sub-questions to be asked. This approach allowed us to remain open to comprehensive information in the field of research, not simply the data we were interested in for the purpose of achieving the research objectives (Mesec 1998). Considering that perceived violated human dignity is still an unexplored research field, there was a possibility of unexpected interview answers, which would raise additional questions for the interviewees, or the need to exclude out certain issues based on unexpected findings. For these reasons, semi-structured interviews were seen as suitable for this type of research.

The subjectivity of the human dignity concept makes it difficult to apply. When researching human dignity, it is important to consider that human dignity is a dynamic subjective belief and has a shared meaning among humanity (Haddock 1996).

## 5. Research Operationalisation and Development of the Research Framework

a) The degree of realised dignity according to our concept comprises two elements that are both required to fully encapsulate realised dignity:

- an individual's relationship to themselves (self-respect); and
- an individual's relationship to their fellow humans (and *vice versa*).

Realised dignity is reflected in a person's relationship towards him- or herself and towards other people. It represents the dignity that people can perceive and feel while in touch with themselves and their fellow humans (Kleindienst 2017).

According to the second element, it is crucial to achieve a state in which a person feels that they are being treated by their fellow humans as an individual worthy of respect. Realised dignity is based on initial dignity being its spine or the foundation of its function. Initial dignity may be described as a meta-assumption that enables a human being the possibility of receiving the respect of other people (Kleindienst 2017). It thus follows that while constructing qualitative research on the realisation of human dignity in vertical relationships (individual–judicial branch of power), there prevails a necessity for the indicator of a *general feeling of being respected/being treated as an individual worthy of respect (i.e. as a human being)*.

The indicator described above led us to propose an interview question as part of the qualitative research framework:

*How would you overall assess the level of the court's respect shown to you during the court proceedings? In general, would you say that you were treated as an individual worthy of respect (i.e. a human being) during the proceedings – in your view, were you treated respectfully? In which way did you feel it?*

b) In criminal court proceedings, different persons are present in the courtroom and not all of them belong to the judicial branch of government. As this article is concentrated on the individual–judicial branch of power relationship, it is vital to differentiate attendants at court proceedings, especially the accused person, lawyers, witnesses, judge, court reporter, state prosecutor and any members of the public watching. In this regard, for the purpose of designing a proper qualitative research framework for delving into the individual–judicial branch of power relationship, we must in particular consider two indicators:

- an accused person's feeling of being respected by the judge as well as by other court employees; and
- an accused person's feeling of the level of protection of respect shown by the judge when the dignity of the accused was being endangered/violated by other participants of specific criminal court proceedings.

Building on the indicators described above, the following interview questions were proposed to form part of the qualitative research framework:

*Were there any differences in the respect shown to you by those attending the court proceedings? What kind of differences? How did that make you feel? How did the judge react to any disrespect shown to you by other participants on the criminal court proceedings? Please describe.*

It is especially imperative to distinguish between a judge/court and a state prosecutor since the position of state prosecutor in the Republic of Slovenia is not entirely clear. Pursuant to legislation in the Republic of Slovenia, state prosecutors are independent state bodies as part of the judiciary (Article 10 of the State Prosecution Service Act – ZDT-1). 'State prosecutors' offices shall be autonomous state bodies within the justice system' (Šturm et al. 2002, comment on Article 135). Erbežnik (Avbelj et al. 2019, comment on Article 135, No. 10) says that, regarding its placement in the system of division of powers, the prosecutor's office belongs to 'bodies with such specific functions that they cannot be classified in any of the three branches of government, or at least not entirely "without

residue" in only one of them' (U-I-307/94, item 14) and is 'part of justice in a broader sense' (Avbelj et al. 2019, item 16; U-I-202/99, item 12). In the subsequent main case U-I-42/12, the CC additionally explained that the State Prosecutor's Office is part of the executive branch of power (namely, it is not independent, as is the judicial branch of power), but is subject to 'functional independence' in specific cases because the state prosecutor's office 'is not such a part of the executive power that can be directed by the government or any ministry in terms of political and professional instructions in concrete matters' (item 27). Therefore, 'the state prosecutor's office, which is otherwise a part of the executive branch, for the functioning of this branch as a whole, means its limitation and control over it, and thereby also significantly co-determines the balance of this branch with the legislative and especially the judicial branch of branch' (*ibid.*). It is independence in a functional sense. State prosecution offices must be organised 'as an independent state body' (*ibid.*, item 25). 'The independence of state prosecutors in the performance of their prosecutorial function must be guaranteed by the laws that regulate the state prosecutor's office or the implementation of the prosecutor's function (e.g. laws that regulate the state prosecutor's office, criminal procedure and the police)' (*ibid.*, item 32), and this independence is also related to the incompatibility of the prosecutor's office with holding office in other state authorities, local self-government authorities, bodies of political parties, and with other offices and activities as provided by Article 136 of the Constitution (*ibid.*, item 28). In decision II Ips 51/2019 of 25 April 2019, the Supreme Court of the Republic of Slovenia stated that by detaining aggressive and unruly persons into an institution (in this case it refers to a closed department of the social welfare institution) in an inappropriate manner (i.e. placing them into spaces intended for common living and movement), the interference with human rights is distinctly aggressive since it interferes with the very starting point, i.e. human dignity (Articles 21 and 34 of the CRS) and even threatens the value of the inviolability of human life (Article 17 of the CRS). This raises the question of whether the presence of an aggressive and uncontrollable person in proceedings before a court can affect the human dignity of the other participants present, and to what extent can the court be held responsible for this if it does not act to halt such behaviour? Following this reasoning, we propose that researchers pay special attention to possible aggressiveness/offensiveness by a participant in criminal court proceedings towards the accused and the judge's reaction to that behaviour.

#### c) Communication

Research in other fields (e.g. nursing, Essence of Care 2003; Cass, Robbins, and Richardson 2009) stresses that staff must communicate with the individual (patient) in a way

that instils in them a sense of respect for their individuality in order to ensure that the individual is treated in accordance with human dignity. This can also be applied to the example of legal proceedings. The court must conduct appropriate communication with the participants in the criminal court proceedings, including by taking account of any special needs the participants may have in this respect (language barriers, etc.). It then follows that while constructing qualitative research on the realisation of human dignity in vertical relationships (individual–judicial branch of power), two indicators must be considered:

- *a feeling of the level of respect of the court's communication with the accused person; and*
- *a consideration of any special needs the accused person may have for communicating with the court.*

The above-mentioned indicators lead us to propose the following interview questions as part of the qualitative research framework:

*How do you assess the court's level of respectful communication with you during the proceedings?*

*How do you assess the court's consideration of your language and communication needs/barriers during the proceedings?*

#### d) Privacy – Confidentiality of Information/Personal Data

Research in other fields (e.g. nursing, see Essence of Care 2003; Cass, Robbins, and Richardson 2009) points to the importance of the confidentiality of information and the privacy of individuals (patients) as an important factor in protecting dignity. The publicity of judicial proceedings as a fundamental postulate of every democratic society in most legal systems is a fundamental human right whose purpose is to ensure the right to a fair trial, which belongs to every party in proceedings (Avbelj et al. 2011; Comment on Article 39, No. 83). Article 39 of the CRS states that the most important aspects of the publicity of a trial are the publicity of court hearings and the public pronouncement of judgements, which protect individuals from judicial functions being conducted in secret, ensure control over the functioning of the courts and, as a result, strengthen the public's trust in their work. The Constitution and all procedural laws in the Republic of Slovenia in principle prescribe that the main hearing be public, yet in civil proceedings hearings outside of the main hearing are also public. A public hearing includes the right of individuals to be present at the main hearing and to report and comment on what is happening. Exceptionally, the public can be excluded from all or part of the main hearing if this is prescribed by a special law or required to protect certain interests (e.g. to protect minors, protect privacy in marital and family disputes, in the detention of persons in psychiatric health

institutions, etc.) or to protect official, business or personal secrets or secrecy and for similar reasons. The principle of the public pronouncement of judgements is also derived from a constitutional provision, but Slovenian procedural laws allow the public to be excluded from the announcing of the reasons for the judgement if the public was excluded from the main hearing, while the judgement must always be read publicly (Avbelj et al. 2011; Comment on Article 39, No. 89).

The indicators described above lead us to propose the following interview question as part of the qualitative research framework:

*How did you feel about the fact that the court hearing was public?*

#### e) Spatial Conditions, Hygiene, Cleanliness

Article 21 of the CRS guarantees respect for an individual's personality and dignity in proceedings before the court, with the right extending to the period of deprivation of liberty and execution of a prison sentence. Under the Rules on the implementation of prison sentences (Official Gazette of the Republic of Slovenia, No. 46/19), the state is obliged to ensure adequate living and accommodation conditions in institutions for serving prison sentences, which enables the consistent observance of inmate's constitutional rights.

Jurisprudence shows that in relation to Article 21 of CRS the court assessed the adequacy of (living) conditions in detention or prison (e.g. Ljubljana Higher Court Judgment (VSL) II Cp 2107/2019, Maribor Higher Court (VSM) Judgment I Cp 75/2020). In such cases, on the initiative of the parties, the courts have already made a few decisions on the violation of human dignity with respect to the suitability of the prison cells/rooms, the surface of prison space, the cleanliness, hygiene, temperature and ventilation of the premises, etc. Such initiatives by the parties show that an individual in detention or prison when faced with inadequate (living) conditions feels their dignity has been violated. In our view, under Article 21 of the CRS, there is an obligation to ensure the adequacy of the conditions both during the deprivation of liberty and during the enforcement of the prison sentence during the court proceedings. This makes it reasonable to assess the adequacy of the conditions also during judicial proceedings. Thus, the indicator showing the realisation of dignity in the relationship between the judicial authority and the individual in connection with Article 21 of the CRS is the *appropriateness of the spatial and other similar conditions in the court during judicial proceedings* (decency of the court room and other rooms, cleanliness, hygiene, temperature, ventilation, etc.).

Following from the indicator mentioned above, we propose the following interview question as part of the qualitative research framework:

*How do you assess the general conditions in the court (court rooms, cleanliness, hygiene, temperature, ventilation, etc.)?*

f) Pursuant to Article 5 of the Criminal Procedure Act (Official Gazette of the Republic of Slovenia, No. 176/21 – official consolidated text and 96/22 – CC Act), the accused must be given an opportunity to be heard regarding all incriminating facts and evidence and to present all facts and evidence to their benefit. This allows us to conclude that limitation of an accused person as concerns their rights under Article 5 of Criminal Procedure Act may lead to them feeling being disrespected and undignified by the court. Hence, an indicator of *having the feeling of having been provided with an opportunity to be heard regarding all incriminating facts and evidence and to present all facts and evidence to their benefit* is important for the realisation of dignity in the judicial authority–individual relationship.

The indicator outlined above leads us to propose the following interview question as part of the qualitative research framework:

*How would you rate your opportunity before the court in terms of being heard regarding all incriminating facts and evidence and presenting all of the facts and evidence to your benefit?*

g) In addition to item 6, we note the relevance of the availability and understandability of all the information about the current legal procedure needed from the side of the accused. It is important for an accused person to be given all the information available in order to successfully defend themselves. Therefore, *the feeling of availability and understandability of all the information needed for the accused person to be appropriately involved in criminal court proceedings* is an important indicator of the realisation of dignity in the relationship between the judicial authority and an individual.

Following from the above-mentioned indicator, we propose the following interview question as part of the qualitative research framework:

*Has all the information you needed during the legal process been available and understandable? How did that make you feel?*

h) Human dignity is repeatedly seen as the basis of the prohibition on discrimination (see e.g. Brezovar 2017). We may thus conclude that discrimination based on personal circumstances (e.g. race, age, gender, religion, social status, disability, political affiliation, etc.) may lead to a feeling of being disrespected by one's fellow human and hence that one's

human dignity has been violated. The *feeling of being (non-) discriminated* is an important indicator while researching the realisation of dignity in the judicial authority–individual relationship.

The indicator described above leads us to suggest the following interview question as part of the qualitative research framework:

*During the legal proceedings, did you feel any discriminatory treatment by the court based on your personal circumstances (e.g. race, age, gender, religion, social status, disability, political affiliation, etc.)? How did that make you feel? Please describe.*

i) As noted in Section 2, self-respect is one of the two main dimensions of human dignity (see Kleindienst 2017; Kleindienst and Tomšič 2022). It relies on self-esteem or a sense of one's own worth. According to Dworkin (2011), self-respect means that an individual recognises the objective value of the relevance of living well. It denotes the attitude that people have towards their lives. In line with Dworkin, it would be unusual if the individual did not care about self-respect. This also includes the judgement that living well means to express oneself; to look for a way of life that embraces the individual in a way that is right for them (*ibid.*). Therefore, we consider *self-respect* as one of the primary indicators while researching the realisation of dignity in the relationship between a judicial authority and an individual.

Following from the above-mentioned indicator, we propose the following interview question as part of the qualitative research framework:

*How do you rate your level of self-respect during the criminal court proceedings?*

## 6. Conclusion

Some attempts to measure human dignity can already be found in the literature, especially in the fields of medicine, healthcare, etc., as described in this article. However, the ambiguous nature of human dignity in relation to many fields means that it is still relatively unclear how human dignity should be measured and how it relates to other concepts. We designed a conceptual research plan for measuring the realisation of human dignity in criminal judicial proceedings. This appears to be a valuable starting point for further research seeking to measure dignity, and its application in the field of law.

While developing our conceptualisation of the realisation of human dignity in (criminal) judicial proceedings, we

described the links between respect and self-respect, and more specifically, one's feeling of being respected or feeling being treated as worthy of respect, one's feeling of the level of protection of their human dignity, one's feeling of the level of respectfulness while communicating with other relevant actors, one's feeling of having their special needs for communication considered, one's feeling of protection of their privacy, one's assessment of the general conditions in the court (spatial conditions, cleanliness, hygiene, temperature, etc.) and one's feeling of being (non-)discriminated. Due to the nature of the concept of human dignity, only a qualitative research methodology was found to be the most suitable for measuring the realisation of human dignity in criminal judicial proceedings. In this sense, semi-structured interviews were suggested as the most appropriate method. The author believes that this framework works quite well by combining a theoretical understanding of the human dignity concept with empirical observation along the lines of a semi-structured questionnaire, and translating the results into a model for empirical research in relation to judicial proceedings. The purpose of the suggested qualitative research is not to create findings and conclusions, but to broaden perspectives to consider other opinions not contemplated or known. Based on potential qualitative studies on the realisation of human dignity in (criminal) judicial proceedings, we might formulate hypotheses to be tested in adequate quantitative research. Since the human dignity concept remains an underexplored scientific topic, qualitative data are needed in order to better comprehend it and potentially to subsequently design quantitative research based on previous qualitative results.

## References

- Avbelj, Matej, Samo Bardutzky, Ivan Bele, Miran Blaha, Miro Cerar, Janez Čebulj, Mtija Deisinger Aleš Galič et al. 2011. *Commentary of the Constitution of the Republic of Slovenia – Supplement A*. Kranj: Fakulteta za državne in evropske študije.
- Avbelj, Matej, Samo Bardutzky, Aljoša Dežman, Polona Farmany, Aleš Galič, Franc Grad, Albin Igličar, Blaž Ivanc, et al. 2019. *Commentary of the Constitution of the Republic of Slovenia*. Nova Gorica: Nova univerza, Evropska pravna fakulteta.
- Baillie, Lesley, Anne Gallagher, and Paul Wainwright. 2008. *Defending Dignity - Challenges and Opportunities for Nursing*. London: RCN.
- Beach, Mary Catherine, Jeremy Sugarman, Rachel L. Johnson, Jose J. Arbelaez, Patrick S. Duggan, and Lisa A. Cooper. 2005. "Do Patients Treated with Dignity Report Higher Satisfaction, Adherence and Receipt of Preventive Care?" *Annals of Family Medicine* 3: 331–8.

- Brezovar, Nejc. 2017. "Dostojanstvo kot temelj pravičnega razumevanja ustavnopravnega koncepta prepovedi diskriminacije glede na starost." *Pravnik* 72 (1/2): 15–40, 133–4.
- Cass, Elaine, Diana Robbins, and Angela Richardson. 2009. *Dignity in care. SCIE Guide 15. SCIE*. [https://hscbusiness.hscni.net/pdf/SCIE-Dignity\\_in\\_care\\_March\\_2009\\_pdf.pdf](https://hscbusiness.hscni.net/pdf/SCIE-Dignity_in_care_March_2009_pdf.pdf). 31.7.2022.
- Chalmers, Don, and Ryuichi Ida. 2007. "On the International Legal Aspects of Human Dignity." In *Perspectives on Human Dignity: A Conversation*, edited by Jeff Malpas and Norelle Lickiss, 157. Dordrecht: Springer.
- Chilton, Mariana. 2006. "Developing a Measure of Dignity for Stress-Related Health Outcomes." *Health and Human Rights* 9 (2): 208–33.
- Daily Mail. 2009. *Questions Related to Dignity and Respect*.
- Denzin, Norman. 1970. *The Research Act: A Theoretical Introduction to Sociological Methods*. Chicago: Aldine.
- DiCicco-Bloom, Barbara, and Benjamin F. Crabtree. 2006. "The Qualitative Research Interview." *Medical Education* 40: 314–21.
- Dixon, Simon, Simon Palfreyman, and Phil Shackley. 2011. *What is Dignity? A Literature Review and Conceptual Mapping*. [http://eprints.whiterose.ac.uk/43280/1/HEDS-DP\\_11-13.pdf](http://eprints.whiterose.ac.uk/43280/1/HEDS-DP_11-13.pdf). 31.7.2022.
- DOH (Department of Health). 2003. *Essence of Care: Patient-Focused Benchmarking for Health Care Practitioners*. London: The Stationery Office.
- Dworkin, Ronald. 2011. *Justice for Hedgehogs*. Cambridge, London: The Belknap Press of Harvard University Press.
- Fontana, Andrea, and James Frey. 1994. "Interviewing: The Art of Science." In *Handbook of Qualitative Research*, edited by Norman K. Denzin and Yvonna S. Lincoln, 361–76. Thousand Oaks, CA: Sage Publication, Inc.
- Formosa, Paul, and Catriona Mackenzie. 2014. "Nussbaum, Kant, and the Capabilities Approach to Dignity." *Ethical Theory and Moral Practice*, 17 (5): 875–892.
- Glaser, Barney G., and Anselm L. Strauss. 1967. *The Discovery of Grounded Theory. Strategies for Qualitative Research*. London: Weidenfeld and Nicholson.
- Grad, Franc, and Igor Kaučič. 2007. *Ustavna ureditev Slovenije*. Ljubljana: GV Založba.
- Haddock, J. 1996. "Towards Further Clarification of the Concept 'Dignity'." *Journal of Advanced Nursing* 24 (5): 924–31.
- HDHS. *Human Dignity and Humiliation Studies*. <http://www.humiliationstudies.org/>.
- Ipsos MORI. 2007. *Department of Health. Public Perceptions of Privacy and Dignity in Hospitals*. <https://www.ipsos.com/sites/default/files/migrations/en-uk/files/Assets/Docs/Polls/poll-cleanliness-and-staff-attitudes.pdf>
- Jacob, Peter. 2017. "Issues in Defining and Measuring Violation of Postulated Human Dignity." In *Human Dignity - Discourses on Universality and Inalienability One World Theology*, edited by Klaus Krämer and Klaus Vellguth. Freiburg im Breisgau: Verlag Herder GmbH.
- Kant, Immanuel. 2002 [1785]. *Groundwork for the Metaphysics of Moral* (Translated and edited by Allen W. Wood). New Heaven: Yale University Press.
- Khatib, Rasha, and Haroutune Armenian. 2012. "Developing an Instrument for Measuring Human Dignity and its Relationship to Health in Palestinian Refugees." *World Medical and Health Policy* 2 (2): 35–49.
- Kleindienst, Petra. 2017. "Understanding the Different Dimensions of Human Dignity: Analysis of the Decision of the Constitutional Court of the Republic of Slovenia on the 'Tito Street' Case." *DANUBE: Law and Economics Review* 8 (3): 117–37.
- Kleindienst, Petra. 2019. "Zgodovinski temelji sodobne paradigme človekovega dostojanstva." *Phainomena: glasilo Fenomenološkega društva v Ljubljani* 28 (108/109): 259–82.
- Kleindienst, Petra, and Matevž Tomšič. 2022. "Human Dignity as the Foundation of Democratic Political Culture: Legal and Philosophical Perspective" *Law, Culture and the Humanities* 18 (2): 385–404. <https://doi.org/10.1177/1743872117738229>.
- Lembcke, Oliver W. 2013. "Human Dignity – A Constituent and Constitutional Principle, Some Perspectives of a German Discourse." In *Human Dignity as a Foundation of Law*, edited by Kirste and Brugger, 207–31. Stuttgart: Franz Steiner Verlag.
- Magee, Helen, Suzanne Parsons, and Janet Askham. 2009. *Research Realities: Measuring Dignity in Care for Older People. Help the Aged*. <https://www.communitycare.co.uk/2009/01/09/research-realities-measuring-dignity-in-care-for-older-people/>. 31.7.2022.
- Mann, Jonathan. 1998. "Dignity and Health: The UDHR's Revolutionary First Article." *Health and Human Rights* 3 (2): 31–6.
- Mesec, Blaž. 1998. *Uvod v kvalitativno raziskovanje v socialnem delu*. Ljubljana: Visoka šola za socialno delo.
- Netten, Ann, Peter Burge, Juliette Malley, Dimitris Potoglou, John Brazier, Terry Flynn, and Julien Forder. 2009. *Outcomes of Social Care for Adults (OSCA)*. Interim Findings. PSSRU, University of Kent, Canterbury.
- Ragin, Charles C. 2007. *Družboslovno raziskovanje – enotnost in raznolikost metode*. Ljubljana: Fakulteta za družbene vede.
- Sensen, Oliver. 2011. *Kant on Human Dignity*. Berlin, Boston: Walter de Gruyter.
- Shultziner, Doron. 2007. "Human Dignity: Functions and Meanings." In *Perspectives on Human Dignity: A Conversation*, edited by Jeff Malpas and Norelle Lickiss, 73–92. Dordrecht: Springer Netherlands.
- Strauss, Anselm. 1987. *Qualitative Analysis for Social Scientists*. New York: Cambridge University Press.
- Šturm, Lovro, France Arhar, Konrad Plauštajner, Vesna Rijavec, Ludvik Toplak, Miran Blaha, France Bučar, France, Janez Čebulj et al. 2002. *Commentary of the Constitution of the Republic of Slovenia*. Kranj: Fakulteta za podiplomske državne in evropske študije.
- Wiegman, Karen D. 2003. *The Development and Psychometric Testing of the Dignity Instrument*. Columbia: University of Missouri Press.