Human Dignity in Cyprus

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Abstract

Human dignity is understood as a natural right in Cyprus. Bearers of this right are private persons who are protected through civil laws aimed at restitution for non-material damage occurring through violation of human dignity. The Constitution grants protection against torture, humiliation, slavery and forced labour; it guarantees personal freedom and security, crucial with regards to pre-trial detention,

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P. Becchi, K. Mathis (eds.), *Handbook of Human Dignity in Europe*,
https://doi.org/10.1007/978-3-319-28082-0_8

as well as the defendant's rights, such as avoidance of disproportionate sentencing. Rights to privacy and freedom of communication are also protected, although the retention of data remains somewhat problematic. Domicile is also inviolable under the Constitution. Protection of freedom of conscience and beliefs as well as their expression is fundamental. Balancing judgments regarding religious beliefs and hate is an especially delicate and crucial issue. Whereas hatred seems undoubtedly criminalized in Cyprus, freedom of expression seems to leave no place for significant protection of reputation. Equally fundamental is the right to equality, whereby its violation might jeopardize political liberties. Human dignity is protected as decent and socially secure living in positive law. Regarding the right to access to justice, human dignity may be infringed upon when unreasonable delays in adjudication occur. Topics of specific interest are the protection of victims of crime, protection from entrapment and active police intrusion, guarantee of the right against self-incrimination and freedom from forced confessions.

Keywords
Absolute rights · Access to justice · Crime victims' protection · Criminal damages · Detention · Entrapment · Forced labour · Fundamental rights · Human dignity · Natural right · Ombudsman · Proportionality · Right to silence · Self-incrimination · Slavery · Torture

1 Introduction

Human dignity is the core of human rights (part II of the Constitution), which are afforded to everyone in Cyprus through the Treaty of Establishment (Art. 5 of the Constitution) and are based on the most relevant international legal sources, such as the European Convention of Human Rights (ECHR) and the 1948 UN Universal Declaration of Human Rights (UDHR). Cyprus signed the Rome Convention in 1961 and ratified it through Law 28/1962; thus, full implementation of the ECHR and its 1st Protocol began from 24 May 1962, although there had been links with the ECHR even before the island's independence (Neocleous 2009, pp. 71, 74).

2 The Fundamental Legal Understanding of Human Dignity and Its Protection

In the Cypriot legal order, human dignity functions as the "natural right" par excellence. In *Police v A. Georghiades* (1983) 2 CLR (Cyprus Law Reports) 33, the Supreme Court (SC) held that human rights cannot be prescribed and are diachronically inherent to the human person. In *Giallouros v Nicolaou* (2001) 1 CLR 558, the SC held that human rights are universal and inalienable as an integral part of the person's individual and social life. Furthermore, this

ruling in favour of the plaintiff awarded civil law compensation for suffering the interception of his telecommunications, although the defendant argued that the Tort Law (Chap. 148) did not describe the alleged conduct as specifically tortious. This seems to recognize the theory favouring an extension of fundamental rights protection to protection against private persons ("*Drittwirkung*"). Protection against private persons was not recognized explicitly, but indirectly via Art. 35 of the Constitution, imposing on the Republic of Cyprus the obligation of taking care of the protection of the rights enshrined in part II of the Constitution. The explicit reasoning of the court was instead the common law principle "there should be a remedy for a wrong" (Paraskeva 2015, pp. 6, 29–32; Papasavvas 2002, pp. 841–50 and at pp. 856, 861 referring to the *Giallouros v Nicolaou* case text; he also mentions that Judge Pikis declared human rights in the above mentioned *Georghiades* as "inalienable and [rights that] inherent in man at all times, to be enjoyed and exercised under constitutional protection", and that he also connected Art. 15.1 and 17.1 of the Constitution clearly with the "dignity of man" (at p. 842); as to Art. 35, see Loizou 2001, p. 220). In this rather old-fashioned "natural law" language (Papasavvas 2002, p. 850, rejects the opinion that human rights are conceived of in Cyprus according to natural law, but without explaining why this is so), the Cypriot constitutional law tries to insulate human rights and especially human dignity from political turbulence or changes in societal normative understanding. In the case *Pyrgon Municipality* et al. *v The Republic* (1991) 4 CLR 3498, the SC accordingly stressed the inviolability of human rights *qua* "permanent values". In accordance with this position and the respective Art. 146 and Art. 179 of the Constitution, human dignity binds the executive power and the administration to incorporating the quintessence of the Constitution, itself being the "*lex superior*" to any other legal statute. Any law or administrative act contrary to human rights is to be declared null and void by the SC, or even by other courts if their decision is not appealed. The SC may also issue prerogative orders ("*certiorari*" or/and "prohibition") holding inferior courts always within the scope of their jurisdiction (Paraskeva 2015, pp. 7, 24–25, 51). The control of the laws' constitutionality may be repressive (Art. 144 of the Constitution) or preventive (Art. 140 of the Constitution); in the latter option, the President of the Republic may introduce a bill to the SC before its promulgation. In both cases, the legal review is rather formal, does not interfere with the legislative motives and is carried out "bona fide", that is, trying to interpret the law as "fitting" into the constitutional system (Paraskeva 2015, pp. 43–46; see also SC, *Board of Registration of Architects and Civil Engineers v Kyriakides* (1996) 3 CLR 640; *President of the Republic v House of Representatives* (Appl. No. 1/2014) of 31 October 2014). The activity of the Cypriot Ombudsman (L. 3/1991) is also important. This institution supervises the State in cases of maladministration, non-abiding to legality and violation of rights. Further, the National Organization for the Protection of Human Rights was established 1998 by the Council of Ministers and charged with dissemination of information, raising awareness, consulting the government and monitoring the rule of law. Reports on the constitutional state are also prepared by the Parliamentary Committee of Human Rights, which suggests legal measures to the House of Representatives.

Finally, nongovernmental organisations (NGOs) are also active in the field (Paraskeva 2015, pp. 56–57; Neocleous 2009, pp. 80–82; on the activities of the Ombudsman see also Sect. 4.1).

Violation of human dignity from a civil law perspective was initially judicially protected through the imposition of "criminal damages" (i.e., fees for tortious conduct), which must be – in accordance with the precedent set by the SC in *Papakokkinou v Kanther* (1982) 1 CLR 65 – "so intrinsically blameworthy as to deserve punishment from a civil court". These reparations were either labelled "aggravated" or "exemplary" damages (see Papasavvas 2002, pp. 838–839 and at pp. 853, 857 referring to the text of the above mentioned *Giallouros v Nicolaou* case). Because, as we saw in *Giallouros v Nicolaou*, the reparation fees are to be imposed irrespective of whether the behaviour was tortious or not, they are not considered as having to do with punishment or deterrence. Instead, they are considered to be the proper civil law remedy for violations of human rights, such violations constituting what is known as "moral/non-pecuniary damage" consisting, for example, of distress, moral damage, pain and suffering (Papasavvas 2002, pp. 850–851 and at pp. 858–859, 861 referring to the *Giallouros v Nicolaou* case text). It is also maintained in *Simpson v Attorney-General [A-G]* (1994), 3 NZLR 667 that intangible harm is, other than physical damage, to be compensated for in due proportion to context (gravity of the breach, importance of affirmed rights) and in avoidance of extravagant awards. In the Cypriot legal order, the compensation has to be analogously proportional ("equitable damage") (see Papasavvas 2002 p. 860 referring to the *Giallouros v Nicolaou* case text).

3 Human Dignity in the Constitution

3.1 Protection Against Torture and Humiliation

The most clear and intense protection of human dignity is laid down in Art. 8 of the Constitution, which forbids torture and any inhuman or humiliating treatment. The provision is identical to Art. 3 ECHR and Art. 5 of UDHR and also expresses the spirit of the provisions of the International Covenant of Civil and Political Rights (ICCPR) (Art. 7), the UN Convention Against Torture (CAT) and the European Convention against Torture and Inhuman Treatment (CPT). It is a provision that incorporates international customary law in the form of *ius cogens* into the Constitution (Paraskeva 2015, p. 90). The protection of human dignity against torture is absolute in Cyprus; that is, no exception can be accepted even if specific circumstances exist, such as when a state of emergency has been declared (Art. 183.2 of the Constitution) or when terrorism or organized crime need to be dealt with. In *Cyprus v Turkey*, Report of the Commission of 10 July 1976 (paras. 373–414), it was held that torture and inhuman treatment are prohibited even in times of war (Paraskeva 2015, pp. 37, 91; Loizou 2001, p. 48). Overzealous police conduct has been disavowed by the SC (see, e.g., SC, *Kokkinos v The Police* (1967) CLR 217; *Police v Ibrahim* (1973) 2 CLR 711; Paraskeva 2015, p. 95). Regarding the conditions of serving a

criminal law sentence, the European Court of Human Rights (ECtHR) decision in the case *Kafkaris v Cyprus* (ECtHR [Appl. No. 21906/04] of 2 February 2008, paras. 97, 98, 103, 108) is of special importance. In this case, Cyprus introduced into its penal system the institution of parole for convicts sentenced to life. Through L. 37(I)/2009, the Law on Prisons (L. 62(I)/1996) was amended accordingly, establishing the right of the "lifer" to address the Parole Board, which could then permit the release of the convict under certain conditions (Paraskeva 2015, p. 97). The precedent set by the *Vinter* ECtHR case is crucial for the reasoning of the Parole Board. In that case, the court decided that, in the frame of the European and international criminal policy goals and punishment aims, any deprivation of the lifer's hope for an earlier release or review of their case would run contrary to Art. 3 of the ECHR (see ECtHR, *Vinter* et al. *v UK*, [Appl. Nos 66,069/09, 130/10, 3896/10] of 9 July2013, paras. 114–115; see also Paraskeva 2015, pp. 97–98).

As to the quotidian conditions of detention for serving a sentence, Art. 8 of the Constitution may apply when special care has to be taken for various reasons, such as the legal status of the detainee (when he/she is held captive on remand), health reasons, the exceptional austerity of a measure (e.g., isolation), the need for disciplinary measures to be proportional or, of great interest, the overall conditions of imprisonment. The latter may have deteriorated over time as a result of structural deficiencies caused by budgetary shortcomings (impacting the minimum requirements regarding fresh air and light, communication with the outside world, hygiene imperatives, or medical care) or by overpopulation (Paraskeva 2015, pp. 102–106). In cases of extradition or expulsion, the precedent of the *Soering* case is also binding upon Cyprus. The Republic has to deny both extradition or expulsion if the person involved might be subjected to conditions inflicting huge psychical pain, as is the case with death row syndrome, whereby extremely austere conditions of detainment and the agony occurring out of the steadily imminent danger of execution result in degradation and torture (see ECtHR, *Soering v UK* [Appl. No. 14038/88] of 7 July 1989, paras. 88–91; see also Paraskeva 2015, pp. 106–109; Loizou 2001, p. 49).

It can be inferred that, on the basis of a coordinated interpretation of Art. 8 and Art. 35 of the Constitution, certain positive obligations for the Republic arise regarding the prohibition of torture. Thus, official investigation has to be carried out in the case of complaints. The investigation has to be impartial and thorough, has to guarantee the possibility of a just outcome (without, of course, establishing something more than an "obligation of means") and has to be completed in due time (Paraskeva 2015, pp. 109–111). The crucial criterion of "beyond doubt" has to be taken as the evidential threshold for establishing the guilt of an officer. The context (e.g., the specific modus operandi, duration of treatment, impact on a specific victim, gender or health conditions, etc.) is crucial. Nevertheless, when the external impression warrants suspicion that Art. 8 of the Constitution has been violated, a certain shift of the burden of proof onto the authorities has to be affirmed (such as, in accordance with the rules governing not overly oppressive or unreliable but nonetheless prima facie "unfair" confessions, when, for example, the released convict is physically harmed, having been in good condition at the time of entering custody) (Paraskeva 2015, pp. 111–112; Loizou 2001, pp. 46–47). Because Art. 35 of the

Constitution does not make any distinctions, the protection against torture is also afforded to victims of private offenders and is not limited to state officials (Paraskeva 2015, pp. 112–113).

3.2 Prohibition of Slavery and Forced Labour

Human dignity is further protected through the absolute prohibition of slavery and forced labour (Art. 10 of the Constitution) in the spirit of Art. 4 of the ECHR and of the UN Declaration. "Servitude", a state just short of slavery is also prohibited. Whereas slavery is the total transformation of the victim to an object of foreign property, servitude is a situation in which the person is forced to serve without such a "legal" status. This differentiation is expressed especially in the ECtHR, *Saliadin v France* case (Appl. No. 73316/01 of 26 May 2005, paras. 112, 122–123; see also ECtHR, *CN and V v France* [Appl. No. 67724/09] of 11 October 2012; *C.N. v UK* [Appl. No. 4239/08] of 13 November 2012; see Paraskeva 2015, pp. 122–125). Along the same lines, the most modern form of slavery and servitude, trafficking of persons, is also forbidden under Art. 10. A notorious case concerning Cyprus (and Russia) is the killing of O. Rantseva, a person left totally unprotected by the authorities to whom she fled after the first days of her "work"; she was handed over to her "employer" and found dead afterwards (ECtHR, *Rantsev v Cyprus and Russia* [Appl. No. 25965/04] of 7 January 2010; see also Paraskeva 2015, pp. 125–126).

As to forced labour, one has to take as point of departure certain positive or negative presuppositions, as laid down through the jurisdiction of the ECtHR: The labour is unwanted and oppressive when it is carried out under the menace of penalty in case of denial, whereas it is not held as forced if agreed upon as a term in a free contract (not itself amounting to slavery), if it emerges out of the framework of common living or co-habitation, it is done voluntarily or carried out as the cost of other benefits (e.g., welfare benefits) or if it is a consequence of a change in the work (e.g., when more work is less rewarded than before) (e.g., European Commission of Human Rights [EComHR], *Inversen v Norway* [Appl. No. 1468/62] of 17 December 1963; ECtHR, *Van der Mussele v Belgium* [Appl. No. 8919/80] of 23 November 1983; see also Paraskeva 2015, pp. 126–129; Loizou 2001, p. 52). According to Art. 10.3 of the Constitution, there is no forced labour when convicts or detainees are obliged to work in conformity to Art. 11 of the Constitution protecting personal freedom and security, as well as Art. 5.1 ECHR. The inclusion of imprisoned persons into the social welfare system cannot be claimed under Art. 10. Further, military service is not forced labour. An exception is the case of persons denying service in the army on the grounds of their conscience or religious beliefs. According to the National Guard Law (L. 19(I)/2011), alternative service is provided for in such cases. No right for alternative service is recognized for persons already involved in criminal acts having to do with arms or legally bearing or seeking to bear arms or having served in the army or the police forces despite their beliefs. The prior stance of the jurisdiction, totally rejecting the objections to military service raised by Jehovah's Witnesses (e.g., SC, *Pitsillides* et al.

v The Republic (1983) 2 CLR 374, holding that the law imposing conscription into military service is constitutional as serving the country's security) does not stand anymore. Any work done in dealing with situations of exceptional need or disaster threatening social life does not constitute forced labour (Paraskeva 2015, pp. 129–132; Loizou 2001, pp. 51–53; Neocleous 2009, p. 79).

3.3 Personal Freedom and Security

Article 11 of the Constitution guarantees personal freedom and security. The issue of pre-trial detention is of great interest here. Because this institution is an investigative measure and not a pre-imposed sentence, the judge has to prioritize liberty before public security as a principle (severity of act, dangerousness of the suspect regarding recidivism and the risk of the suspect's flight if not detained are duly and objectively judged) (e.g., SC, *Karagiorgis* et al. *v The Republic* (1989) 2 CLR 92; *Vassiliou v The Republic* (1997) 2 CLR 7; *Hadjidemetriou v The Republic* 2 CLR 45; *Konstantinides v The Republic* (1997) 2 CLR 109). This runs contrary to the general stance of the Cypriot criminal law jurisdiction, which sets deterrence as a primary aim of punishment, an aim prone to allowing persons to be treated as means for alien (societal) purposes in a clearly anti-Kantian manner (cf. Paraskeva 2015, pp. 156–159; regarding sentencing aims in Cyprus, see Papacharalambous 2015a, pp. 28 footnote 101, 42, 209; regarding Art. 11 of the Constitution, see also Loizou 2001, pp. 53–79; Neocleous 2009, pp. 76–77). These indications in favour of detention do not have to occur cumulatively; even if the existence of one of them can be ascertained, detention may be imposed (see SC, *Siakalli v The Republic* (1997) 2 CLR 130; Loizou 2001, pp. 64–65). The last resort for protection of freedom regarding detention remains the principle that restrictions of rights should not negate the very essence of the right restricted (Art. 33.2 of the Constitution imposes a strict interpretation of the restrictions of rights and accordance of this interpretation to the restriction's legitimate aim) (see, e.g., Loizou 2001, pp. 71, 217–219; see also SC, *Fina (Cyprus) Ltd. v The Republic* 4 RSCC [Reports of Supreme Constitutional Court 1960–1963] 26).

It has been held that a driver's obligation to wear a safety belt does not infringe upon personal freedom, as long as the driver and others participating in vehicular traffic are to be protected (see, e.g., SC, *Dimitrakis Antoniou v The Police* (1989) 2 CLR 299; *Louroutziatis v. The Police* (1983) 2 CLR 125; Loizou 2001, p. 51). This jurisdiction raises the issue of how far penal paternalism should reach. It can be said that the paternalistic stance of Cypriot criminal law is far-reaching (see, e.g., Papacharalambous 2015a, pp. 71, 173–174).

3.4 Defendant's Rights

As to the defendant's rights (Art. 12 of the Constitution), human dignity is especially concerned – apart from the fairness imperative (para. 5) – with the prohibition of

imposing disproportionate sentences (para 3). Thus, sanction and severity of the act are analogous with each other. Minimum sentences cannot be imposed, because this would impact the independence of the judiciary and violate the rule of the separation of powers. General and inflexible sentences cannot be imposed for certain categories of crimes irrespective of the individual context, because it would be contrary to the principle of case-by-case judgement in penal treatment. This is the case with the imposition of certain penalties for a series of violations of special criminal laws (e.g., confiscation for illegal hunting or for violating gun laws; deprivation of driving license for illegal taxi driving, etc.). Alternative sentences are also subject to the proportionality rule, as is the case with recognizance and accompanying bail imposed in accordance with Art. 32 of the Criminal Code. Section 203.2 of the Criminal Code is an exception, whereby life imprisonment is the sole sentence for murder (Paraskeva 2015, pp. 191–193; Loizou 2001, pp. 86–89; Neocleous 2009, p. 80; for the corresponding jurisdiction, see the precedent SC, *District Officer, Nicosia and G. Hajiyiannis* (1961) 1 RSCC 79, as well as SC, *Sarmallis* et al. *v The Police* (1984) 2 CLR 28; *Demosthenous v The Police* (1985) 2 CLR 1). In the spirit of combating inflexibility and disproportionality, total confiscation of property is explicitly prohibited (Art. 12.6 of the Constitution).

3.5 Privacy and Freedom of Communication Rights

Human dignity is also protected in the form of rights to privacy and secrecy of communications (Art. 15.1 and Art. 17.1 of the Constitution). Thus, the penalization of homosexuality among adults constituted a violation of privacy, which was undone only after the ECtHR ruled in the *Modinos v Cyprus* case (Appl. No. 15070/89) of 22 April 1993 against the Republic (see also Paraskeva 2015, pp. 241–242; Loizou 2001, pp. 104–105; Neocleous 2009, p. 77). Private beliefs, the materialization of which could turn disastrous for another, are not respected. Thus, a parent's refusal of a blood transfusion for his/her child is not only not to be respected, but also constitutes murder through omission committed by a guardian of the child's life (see SC, *Charalambous v Director of Department of Services and Social Welfare* (1994) 1 CLR 639; Neocleous 2009, p. 78; for evaluation of the parent's conduct, see Papacharalambous 2015a, pp. 169, 177; Papacharalambous 2017, pp. 53–60, 63, 118–120). Furthermore, interception of conversations as evidence was rejected in SC, *Police v Georghiades* (1983) 2 CLR 33, stressing that wire-tapping unknown to the interlocutors is regarded as an invasion of privacy, invidious to the privacy rights, whereas it is admissible to seek data from books or diaries kept in the area of trade or entrepreneurial activities. Also, records other than of residence, workplaces or cars are not deemed private (SC, *Enotiades* et al. *v The Police* (1986) 2 CLR 64; *Psaras* et al. *V The Republic* (1987) 2 CLR 132). In SC, *Police v Giallouros* (1992) 2 CLR 147, it was held that the protection of these rights is absolute and thus also extends to evidence seeking to prove the innocence of the accused. Through L. 92(I)/1996 on the inviolability of private communications, exceptions from the ban of interceptions were provided to facilitate police investigations under certain terms

(i.e., a prior judicial ruling permitting the act or, in cases of emergency, a ruling following the act and issued within 24 h of it). Under this law, it was held that even disclosed mobile phone numbers were protected because they are narrowly connected with the communication's content. The widened control of the property of relatives of persons belonging to political personnel has been considered contrary to Art. 15. A law concerning control and punishment of public officials and politicians was declared null and void due to non-conformity to the Constitution (SC, *President of the Republic v House of Representatives* (Appl. No. 2/1999) of 12 May 2000; *Republic v Symianos* et al. (1999) 2 CLR 537; see also Chapalambous 2015, pp. 95–99; Paraskeva 2015, pp. 266–271; Loizou 2001, pp. 107–109, 110–112; Papasavvas 2002, pp. 841–843; Neocleous 2009, p. 78).

After L. 183(I)/2007 incorporating the EU Data Retention Directive 2006/24/EC entered into force, Art. 17 of the Constitution had to be accordingly amended, because para. 2 only allowed the monitoring of imprisoned or bankrupt persons. After the rejection by the SC of evidence gathered by the police according to the new law, but without the proper amendment of Art. 17 of the Constitution (SC, *On the Petition of Matsas* et al. (2011) 1(A) CLR 152; *Siamisjis v The Police* (2011) 2 CLR 308), Art. 17 of the Constitution was amended by L. 51(I)/2010 (6th Amendment) to allow monitoring after a court ruling in cases of state security; for combating certain serious crimes such as murder, manslaughter, trafficking of persons, child pornography or drug-related offences; and against crimes punishable with a minimum sentence of 5 years (Charalambous 2015, pp. 99–102; Paraskeva 2015, pp. 264, 271–276; on the need for the amendment see also Stefanou 2009, pp. 737 et sqq.). In SC, *On the Petition of Isaias* et al. (Civil Law Appl. No. 402/12) of 7 July 2014, it was held that a disclosed IP address (identifying the provider of e-services, e.g., through *Facebook*) may be given to the police, who then have to seek a court ruling to utilize the data of the address in order to locate the illegal user (Charalambous 2015, pp. 102–103). More important in this case was that the minority stressed the fact that Cyprus could not use L. 183(I)/2007 after the EU Directive had been annulled by the Court of Justice of the European Union (EUCJ) and because the Cypriot law was the incorporation of that Directive; the majority held otherwise (see Charalambous 2015, p. 103 footnote 63; on L. 183(I)/2007 see Papacharalambous 2014, p. 428 footnote 35; Paraskeva 2015, p. 263).

3.6 Inviolability of Domicile

Human dignity is also reflected in the inviolability of the home (Art. 16 of the Constitution). This is a clearly negative right against public officials, not entitlement to a house from the state. Home means the place of private and familial life, but also the place where professional activities are exerted (see ECtHR, *Buck v Germany* (Appl. No. 41604/98) of 28 April 2005, para 31); public places do not constitute, of course, a "home". Exceptions to the prohibition of entering the home are (a) the use of a search warrant by the police, which is issued according to Art. 27 of the Criminal Procedure Law (Chap. 155) when there is a reasonable suspicion that a

house-search may render crime-related information; (b) the explicit consent of the inhabitants; and (c) necessity (i.e., when entering takes place for the purpose of rescuing victims of violent crimes or persons from a disaster). Although home asylum is enforceable only against public officials and not against private persons (the illegal conduct of whom is punished under the respective criminal law provisions protecting domestic peace), there is an obligation of the state in general (*arg. ex* Art. 35 of the Constitution) to guarantee conditions permitting proper exertion of the right to home privacy, such as environmental conditions (e.g., freedom from noise or nuisance) (Paraskeva 2015, pp. 251–259; Loizou 2001, p. 109; Neocleous 2009, p. 73 footnote 115).

3.7 Freedom of Thought, Conscience and Beliefs

Human dignity is of course closely connected to freedom of thought and conscience (and religious belief) as well as freedom of expression (i.e., according to Art. 18 and Art. 19 of the Constitution). Regarding the freedom of belief, the Constitution does not protect beliefs that are not closely and intimately connected with the personality. The right not to have a religion is also protected. Regarding the protection of beliefs, the case of conscientious objectors (see Sect. 3.2) is crucial. The trend – after ECtHR, *Bayatyan v Armenia* (Appl. No. 23459/03) of 7 July 2011– is to interpret freedom of religion apart from the narrowness and specificities of the state regulation of military service. SC, *Sarieddine v The Republic* (2004) 3 CLR 572 remains contrary to this trend. There, the court could not see how the religious freedom of a person belonging to a Muslim sect would be infringed upon by his military service. A general condition for a religion to be protected is that it is existent, known and recognizable (Paraskeva 2015, pp. 279–284; Loizou 2001, pp. 112–114; Neocleous 2009, p. 79). The state may not interfere with the equality of religious beliefs; it has to be tolerant towards all religions (see, e.g., SC, *Ktimatiki Eteria Neas Taxeos Ltd. v The Chairman and Members of the Municipal Committee of Limassol* (1989) 3 CLR 461). Nevertheless, no one has the right to be dismissed from one's obligations to the public on the grounds of freedom of religion or conscience. A pacifist may, for example, not invoke such a right to avoid paying taxes for the military (Paraskeva 2015, pp. 285–287). However, as long as the Rawlsian terms of political justice are not legally binding (i.e., it is not cleared that claims based on "comprehensive doctrines" are *ipso facto* outlawed), an issue still remains. Of course, taxes, fees or pecuniary contributions that are so burdensome that they turn disastrous (i.e., are totally detrimental to the persons' very existence, amounting to total confiscation or de facto prohibition of professional activity) are forbidden according to Art. 24.4 of the Constitution (SC, *Crown Resorts Ltd. v Municipality of Paralimni* (Case No. 1394/2007) of 19/6/2009; *Vetalia Clothing Manufacturers Ltd. v The Republic* (Case No. 1449/2000) of 24/5/2002; *The Republic v Hadjiioannou* (1994) 3 CLR 401; see also Paraskeva 2015, pp. 412–413; Loizou 2001, pp. 161–162). Freedom of religious worship is also guaranteed. Believers may not be deprived of worshiping places because of responsible omission of state services. However, when permission

to run administrative offices of a religious corporation is not granted, there is no fault from the state's side because the offices are not a worshiping place (SC, *Church of the Nazarene International Ltd. v the Minister of the Interior* et al. (1996) 4 CLR 3091; Paraskeva 2015, pp. 287–290). According to Art. 18, everybody is free to abandon a religious belief or to try to convert others to such a belief. Religious freedom is only limited when proselytism is attempted, that is, when conversion is attempted by illicit means such as the use of "physical or moral violence" (para. 5) to "persuade" another. Of course, religious freedom is not an absolute right; it can be regulated in the name of state and public security, public order and health, or protection of morals and rights. Thus, sections 138–142 of the Criminal Code protect public order from acts against religious beliefs, gatherings or cemeteries. Also, no right of collective suicide or of sacrifices and bloody rituals on the grounds of religious belief may be recognized (Paraskeva 2015, pp. 290–293; Neocleous 2009, p. 73 footnote 118).

All forms of freedom of expression fall under Art. 19 of the Constitution (and in conformity with Art. 10 of ECHR). The right is considered as one of the most fundamental within part II of the Constitution (see, e.g., SC, *Hadjinicolaou v The Police* (1976) 2 CLR 63). Protecting the dissemination of information, the provision guarantees the freedom of the press and the media. As to the latter, there is the possibility that licenses may be required for radio or TV enterprises. Such licenses are absolutely necessary in a society where the media enterprises tend systematically to put the very notion of democracy under threat of corrosion, insofar as an undifferentiated extension of human rights to such enterprises equates to an abuse of the notion of human rights. Article 19 protects not only the positive freedom of expression (i.e., the one actively carried out), but also the negative freedom of expression, like that incorporated in the exertion of the right to silence during criminal investigation (Paraskeva 2015, pp. 296–299, 308–309; Loizou 2001, p. 116; as to the incompatibility of human rights and enterprises' rights, due to the lack of any notion of "embodied vulnerability" for enterprises, see Grear 2010). Article 19 also covers the well-established journalists' right not to disclose their sources of information (see, e.g., ECtHR, *Goodwin v UK* [Appl. No. 28957/95] of 11 July 2002); see also Paraskeva 2015, p. 311). Likewise, Art. 18 and Art. 19 do not establish an absolute right; it may be limited in the name of public security, morals, reputation, secrecy, etc. (para. 3). Thus, restrictions on the rights of expression and dissemination of information in favour of public security or public morals are contained in several provisions of the Cypriot Criminal Code. For example, Art. 50A punishes the illegal providing to another of information concerning the army and military defence, Art. 50C punishes spying, Art. 135 protects state secrets and Art. 177 prohibits indecent broadcast. In the spirit of the *Handyside* acquis (ECtHR, *Handyside v UK* [Appl. No. 5493/72] of 7 December 1976], even "offending, shocking and disturbing" opinions are protected and any restriction of the freedom of expression must be necessary and proportional to the right. Further, any restriction must be directly related to the purpose it serves. As the SC decided in *Police v Ekdotiki Eteria* (1982) 2 CLR 63, the incrimination of disseminating false information prone to shatter the trust of the population in the state and its organs was in

conformity with the Constitution. A conflict between aspects of the right may emerge when freedom of the media leads to clear violation of another's reputation, which is also an offspring of human dignity. In Cyprus, there is a defence favouring aggressive journalism: Art. 21 of the Torts Law (Chap. 148) establishes the possibility that information that violates the individual's reputation may be justified if the context so requires (i.e., the gravity of the facts, the urgent need of the population to be informed, etc.). Contempt of court is a very sensitive issue. It has been held that the restriction is important and the perpetrator is to be treated in the same way as violators of judicial decrees (see also SC, *Alitheia Ekdotiki Eteria Ltd.* et al. *v Aloneftis* (2002) 1 CLR 1863; *Constandinides v Vima Ltd.* et al. (1983) 1 CLR 348; see also Paraskeva 2015, pp. 299, 301–302, 304–307; Loizou 2001, pp. 114–131).

Specific attention has to be given to the spirit of Art. 10 of ECHR – tacitly implied in Art. 19 of the Constitution – as to the ban of certain forms of expression, such as racist or hate speech. Racist speech is not taboo as a radical interpretation of the *Handyside* spirit would have us believe; in ECtHR, *Norwood v UK* (Appl. No. 23131/03) of 16 November 2004, the identification of Islam and fundamentalist terrorism was exempted from protection, as was the case with expressions of anti-Semitism in the ECtHR cases *Garaudy v France* (Appl. No. 65831/01) of 24 June 2003 and *W. P.* et al. *v Poland* (Appl. No. 42264/98) of 2 September 2004. Analogously, in favour of the restriction of free speech rights was the standpoint of the ECtHR in *Féret v Belgium* (Appl. No. 15615/07) of 16 July 2009, a case of public incitement to hatred against immigrants (see also Symeonidou-Kastanidou 2013, pp. 482–484). In Cyprus, the Criminal Code henceforth contained provisions expressly punishing acts of hatred committed with racist motives (such as Art. 35A on prejudice as aggravation in sentencing or Art. 99A on instigation to violence on the grounds of sexual orientation or gender identity). Racism and xenophobia are dealt with in a specific law (L. 134(I)/2011 (see Sect. 4.1.).

What is the quintessence of hate speech? First, it basically deals with group-based crimes. The target of the attack is not the individual but a common characteristic shared with others in a way that the individual cannot dispose of; hence, the imminence and the tendency to spread are inherent in the conduct. Second, the criminal law reaction against discrimination should be preventive and pro-active by principally allowing liability to be established without requiring strict application of causation terms or of the correspondence principle between *actus reus* and *mens rea*. Admittedly, some concessions to a de facto reversal of the burden of proof are made, but this cannot put in doubt the legitimacy of abstract endangerment as a well-established doctrinal feature that can also be applied here. Therefore, in Cyprus, the anti-discrimination laws enacted in 2002 and 2004 (L. 205(I)/2002; L. 58(I)/2004; L. 59(I)/2004), aimed at the necessary harmonization with the respective EU Directives, follow this pattern in establishing a reversal of the burden of proof (outside criminal proceedings), affirmative action, and administrative monitoring authorities. Especially noteworthy is L. 42(I)/2004, which grants enhanced competence to the Ombudsman Against Racial Discrimination (see Sect. 4.1). Third, the perpetrator's error as to

the qualifications of the victim has to be dealt with as "*error in persona*" and not as a genuine error of fact, which could negate criminal intent. Fourth, the motives are extremely crucial. One cannot rely only on "intention" (technically understood as voluntariness plus knowledge plus wilfulness), because fighting against discrimination and hate means reaffirmation of the aims of law through punishment of "mere guilty mind" externalizations without further acts, whereas traditionally criminal law punishes harmful acts. Regarding hate speech, it is crucial not to restrict an allegedly wide ("complete crime type") conduct through qualifications of *mens rea* requirements, but instead to expand comprehensively incrimination of hateful conduct, which is conceived of principally and basically as an inchoate offence. The issue at stake is thus the identification of *actus reus* and not of *mens rea*. Therefore, "mere advocacy" may be freed from punishment when it does not obviously lash out at individuals. It is important to note that this cannot outweigh the holism of animus-based incrimination as a principle. Fifth, hate crime laws are militant political weapons of a democratic state and not traditional crime laws. Anti-hate criminal legislation has, for this reason, to be holistically constructed and construed (and should not leave loopholes of protection). However, by the same token, and in contradistinction to the usual criminal law paradigm, it should not become "universalistic" (in the pejorative sense of "legal ideology"). The strong moral-political commitment that anti-hate laws express (i.e., the democratically required protection of decency of the socially vulnerable) do prevent such sublimations, so common in the traditional legalist paradigm (Papacharalambous 2013, pp. 200–201).

A crucial conclusion is that acts and purposes cannot be severed from the underlying system of the perpetrators' beliefs. This has become rather a commonplace in the human rights law doctrine. Religious fundamentalism forms mindsets incompatible with the secularized democracy ideal guiding the ECtHR in *Refah Partisi* et al. *v. Turkey* (2003) (37 EHRR 1 [Grand Chamber]). As ECtHR, *Şahin v. Turkey* (2007) (44 EHRR 5) (a headscarf "hijab" prohibition case) also amply shows, the ECtHR jurisdiction has often referred to public-order considerations of conduct and expressions that are deemed illegitimate; there, the behaviour need not harm, offend or exert pressure on somebody. From a strongly supported feminist point of view, the anti-woman symbolism of the dress may suffice for its prohibition. We have then to accept that the criminal law protection of human dignity through combating hate and discrimination should, by definition, be maximal, not minimal. Insisting on an outdated and undifferentiating "liberalism of safeguards and balances in favour of the defendant" overlooks the fact that, in modern criminal law doctrine, individual guilt is being bypassed by an increasing focus on "collective" forms of guilt (such as organized crime; national, trans-border and international macro-criminality; and corporate crimes). Furthermore, the old-fashioned ethically colourless criminal law positivism should be progressively replaced by politically and ethically engaged criminal legislation in the framework of a "thick" democracy concept that borrows from strong republican principles. In a certain sense, democracy precedes (abstract) freedom (Papacharalambous 2013, pp. 201–202).

3.8 Equality

The basis for anti-racist and anti-discrimination legislation is the equality right enshrined in Art. 28 of the Constitution. The right's protection is not dependent on the violation of another right; it can be autonomously claimed as such before the courts and is in this way different from the equality right contained in Art. 14 of ECHR (Paraskeva 2015, pp. 446–448). Equality does not mean the levelling of differences, which would be an extremism of non-discrimination; different situations are to be dealt with differently and differentiations might be drawn where they are objective, reasonable and proportionate or serve the public interest (SC, *Antoniou v The Republic* (1997) CLR 3 CLR 446; *Serghidis v The Republic* (1991) 1 CLR 119; *Kalisperas v The Republic* (1973) 3 CLR 109; *Georghiou v Municipality of Nicosia* (1973) 3 CLR 53; *Kyriakides v The Republic* (1969) 3 CLR 390; see also Paraskeva 2015, pp. 448–454). Equality is also guaranteed to persons with mental disabilities (SC, *Gavris and the Republic*, 1 RSCC 88; see also Loizou 2001, p. 174). The problem with the judicial control of laws is that their correction through court decisions would jeopardize the separation of powers, as the latter is established (according to Art. 188 of the Constitution) with the bestowal to the House of Representatives of the prerogative to legislate (Paraskeva 2015, pp. 454–456). Equality is guaranteed by administrative acts as well as by the justice system. Equal treatment has to be respected, especially concerning the application of criminal law provisions (e.g., when more participants of the crime are tried and disparity should be avoided), when differentiations are made concerning the indictment of more suspects or when the penalties to more participants at a crime deviate grossly from each other. Due to the privilege ceded to the attorney general regarding criminal law matters (e.g., to stay the process for some defendants; Art. 113.2 of the Constitution), problems may arise as to equality of treatment because of the fact that this privilege cannot be scrutinized by the courts. A remedy in such cases has been acknowledged even by the SC; for the trial judge, eventual withdrawal of accusations against some of the accused is a mitigating factor for other defendants still remaining at trial. The judge may then alleviate the penalties to be imposed on the latter, so that feelings of injustice may be lessened (see, e.g., SC, *Kattou* et al. *v The Police* (1991) 2 CLR 498; see also Paraskeva 2015, pp. 456–463; Loizou 2001, pp. 176–177; Papacharalambous 2015a, p. 209). Despite the flexibility afforded to the legislator in case of constitutional control by the courts, no balancing whatsoever is allowed by the Constitution regarding criteria such as class, race, ethnicity, religion, sex and beliefs. Such deviations from equality are prohibited *ex ante* (Art. 28.2 of the Constitution) (Paraskeva 2015, pp. 463–465; see also Loizou 2001, pp. 174, 178–179). Very correctly, the Constitution also prohibits the conferment of "nobility titles" (Art. 28.4). In this prohibition, the equality pathos of the bourgeois revolutions of the modern era still resonates (Paraskeva 2015, pp. 465–466). Foreign residents on Cypriot soil are also protected in their right to equality. The non-admission of foreigners to vote or be elected, since being a Cypriot citizen is precondition to bear these rights, remains a noteworthy exception. It is an obligation of the state powers to guarantee the equality right to all persons through abstention

from infringing upon the right and through actions of enhancing it (see SC, *Mikromatis and the Republic* 2 RSCC 125). A specific aspect of non-discrimination is contained in Art. 6 of the Constitution, which provides for the equality of the two ethnicities, Greek-Cypriots and Turkish-Cypriots, living on the island (Paraskeva 2015, pp. 466–467; Loizou 2001, pp. 39–40).

Something different is proclaimed through Art. 34 of the Constitution. Whereas, in general, the state is the addressee of the equality imperative, Art. 34 addresses citizens and social groups not to act abusively; that is, they should not act in such a way that the constitutional order might be undermined or basic rights and freedoms put in danger. Based on Art. 17 ECHR, this provision has been evoked (e.g., in SC, *Police v Georghiades* (1983) 2 CLR 33) where inadmissible evidence if approved would violate others' rights and thus allow others to bypass equality. In SC, *The Republic v Hadjiioannou* (1994) 3 CLR 401, rejection of the claimants' opinion that there had been a violation of the right against double taxation was necessary because its affirmation would infringe equality (i.e., would make the rest of the citizens who were bearing the taxation burden worse off). Article 34 of the Constitution (and Art. 17 ECHR) has a specific impact on equality and reaching beyond this right risks jeopardizing political liberties through recognizing state-led prohibitions of political entities in the name of protecting human rights; this represents a contradiction inherent in provisions such as this (see Art. 34 of the Constitution; Paraskeva 2015, pp. 572–573; Loizou 2001, pp. 219–220).

3.9 Decent Living and Social Security

The social dimension of human dignity as a positive right (in counter-distinction to the above mentioned dignity rights representing a "*status negativus*") is featured in Art. 9 of the Constitution. Here, the Republic as a social state is called to guarantee decent living and social security. Article 9 has to be interpreted as part of international provisions such as Art. 25.1 of the UDHR; Art. 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR); and Art. 34 of the EU Fundamental Rights Charter, which all provide that the state is obliged to guarantee its citizens a good level of living and protection against illness, unemployment, social exclusion, disability and senility. However, Art. 9 does not establish a right for citizens to address the justice system with a legal claim. It is a norm addressed to the legislature for initiating laws applying the principle laid down in the constitutional provision. In cases contravening this provision, there is a legal claim for the citizen (SC, *Sofocleous v The Republic* (1986) 3 CLR 2217). On the other hand, in a case concerning lawyers' pensions, the SC decided that no such right is guaranteed through Art. 9 and, thus, that there is no state obligation to establish a pension system (SC, *Montanios v Board of Directors of the Lawyers' Pension's Fund* (2003) 1 CLR 610). The progressive legal upgrading of the rights contained in Art. 9 of the Constitution is evident in the jurisdiction of the ECtHR. In *Stec* et al. *v UK* (Appl. Nos. 65,731 and 65,900/01) of 6 July 2005, the ECtHR ruled that social security benefits are part of the property protected according to the Convention and,

thus, are to be given to beneficiaries if there is proper legislation (see Paraskeva 2015, pp. 114–121; Loizou 2001, pp. 50–51).

3.10 The Access to Justice

The human dignity aspect of the right to access to justice is primarily concerned with the imperative of accelerating the judicial procedure so that it does not exceed a reasonable time (Art. 30.2 of the Constitution; Art. 6.1 ECHR). Jurisdiction and legislation (see L. 2(I)/2010 concerning remedies for the excess of time) declare that Cyprus adheres to the rule of law and that the obligation of such a commitment is the burden of the judicial authorities. It is noteworthy that L. 2(I)/2010 is constrained only to civil litigations, which is a questionable stance if one bears in mind that the right to acceleration is especially important in penal matters (regarding jurisdiction, see, SC, *Theocharous v The Republic* (2008) 2 CLR 22; *Charalambides v The Police* (2004) 2 CLR 330; *Gavrielides v The Police* (2003) 2 CLR 405; *Christopoulos v The Police* (2001) 2 CLR 100; *Efstathiou v The Police* (1990) 2 CLR 294; *Agapiou v Panayiotou* (1988) 1 CLR 257; see also Paraskeva 2015, pp. 539–540, 549–550; Loizou 2001, p. 190). The reasonableness of time is judged on several criteria. First is the complexity of the case, for example, when constitutionality issues have been raised, if the evidence is voluminous, if the nature of the case is demanding (e.g., money laundering), or if difficulties arise as to the *mens rea* and the like. A second criterion is that the parties' conduct is responsible for the delay, although this does not include the mere unwillingness of the defendant to cooperate; inactivity and stagnation of the procedure without his/her responsibility establish liability of the state. Third, it is also important how crucial the interest at stake is for the claimant. If, for example, the profession, legal status or childcare issues are at stake, particular or exceptional diligence is required. Mere delay does not in and of itself make the judicial decision void (see e.g., SC, *Roussos v The Police* (1998) 2 CLR 471). If, however, the delay can be labelled as considerable, surprising and serious, excessive or exceptional, there is a presumption that the right has been violated. This was the case in ECtHR, *Comingersoll SA v Portugal* (Appl. No. 35382/97) of 6 April 2000, with a delay of over 17 years (see also ECtHR, *Gümüşten v Turkey* [Appl. No. 47116/99] of 30 November 2004; see also Paraskeva 2015, pp. 541–542, 545–549; Loizou 2001, pp. 189–190, 200). It is noteworthy that there is a procedural regulation issued by the SC on "Judging in due time" (1986), according to which the litigant may ask the SC to issue an order to accelerate when 6 months have passed after the reservation of the trial judge to make his/her decision. Furthermore, if 9 months have passed since then, the case is brought before the SC *eo ipso* for the order to be issued. This regulation is held as a mechanism of self-control for the justice system, monitoring that state obligations pertaining to human rights are duly carried out (Loizou 2001, p. 200).

In Cyprus, the ECtHR applies the rule adopted in ECtHR, *Frydlender v France* (Appl. No. 30979/96) of 27 June 2000, that a detailed analysis of cases is no longer necessary because the court had already concluded that Cyprus is inherently

incapable of guaranteeing the right and that reforms are urgently needed (Paraskeva 2015, pp. 542–545, 548; Loizou 2001, p. 190; from the decisions of the ECtHR, the authors also refer to ECtHR, *Josephides v Cyprus* [Appl. No. 33761/02] of 2 June 2008; *Aresti Charalambous v Cyprus* [Appl. No. 43151/04] of 19 July 2007; *Papakokkinou v Cyprus* [Appl. No. 4403/03] of 14 March 2007; *Tengerakis v Cyprus* [Appl. No. 35698/03] of 9 November2006; *Shacolas v Cyprus* [Appl. No. 47119/99] of 4 May 2006; *Paroutis v Cyprus* [Appl. 20,435/02] of 19 January 2006; *Papadopoulos v Cyprus* [Appl. No. 39972/98] of 21 March 2000; *Mavronichis v Cyprus* [Reports 1998-II, 944] of 24 April 1998).

4 Specific Topics

4.1 Protection of Crime Victims

Human dignity in Cyprus is protected indirectly but very crucially through crime victims' protection provisions and measures (what follows below is also contained in the Cyprus National Report, which forms part of the CECL project 2012–2014, written by the author of this article). Although no specific procedural status is recognized in favour of the victims, there is sufficient special victim-sensitive legislation, especially concerning obviously vulnerable victims. The Anti-Trafficking Law (L. 87(I)/2007) and the Law against Domestic Violence (L. 119 (I)/2000, as amended through L. 212(I)/2004) are two such examples. Cyprus has ratified the corresponding international legal means to a sufficient degree. For instance, the Anti-Trafficking Law incorporates provisions of the Framework Decisions 2004/68/JHA and 2002/629/JHA of the Council (22 December 2003 and 19 July 2002, accordingly) and the Directive 2004/81/EP. The amendment of the Compensation of Victims of Violent Crime legislation through a corresponding Act in 2006 (initial L. 51(I)/97 as amended through L. 126(I)/2006) concerning the implementation of the Council's Framework Decision 2001/220/JHA and the Compensation of Victims Directive 2004/80/EC is particularly important. Also, a system of intra-governmental synergy has been established, NGOs are active, and independent authorities are involved. Comprehensive protective treatment of the victims of crime has been established through L. 51(I)/2016 implementing Directive 2012/29/EU of the Parliament and of the Council (of 25 October 2012), establishing minimum standards on the rights, support and protection of victims of crime, stressing the obligation of state services and NGOs to treat victims with care and respect (part I of the law).

Crime victims are defined procedurally as "claimants", a definition that does not extend to family members. No priority is given to victims compared with offenders. Victim-sensitive legislation referring to children, trafficking victims, female victims of domestic violence, or disabled or handicapped victims contains specific protective measures. The Anti-Trafficking Law provides for referral of the person to social security services if a public service or NGO suspects that the person is a victim. The social security services inform the person adequately (i.e., comprehensively, in an

understandable language and eventually in written form) and defer the person to the police, the competent institution for recognizing the person as a victim. The Law against Domestic Violence extends the protection to other family members and establishes a family counsellor with investigative competences, tasked with supervising and controlling; the counsellor may also refer the case either to the attorney general or the police or, for further consideration, to a multidisciplinary group (a consultative body staffed by experts provided for by the law). Substantive law protection is also offered against racism and xenophobic conduct (L. 134(I)/2011). Victims also have the right to apply for disciplinary investigations against alleged police violence (L. 9(I)/2006). Victims have the right to address the police, the court or even the Office of the Attorney General in order to receive information pertaining to their case. Because Cypriot law is based on the common law system, victims can only participate in the criminal proceedings as witnesses and do not have the status of a civil party; they are summoned by the prosecution and may also be "mandatory" witnesses. Services cooperate with each other and share information concerning the victims. For example, social welfare services cooperate with the police regarding the victims' identification; the police inform the Migration Department about the victim's conduct with regard to renewal or revocation of residence permits. Law 51(I)/2016 provides that the family members are also recognized as victims, and that the victim is fully informed as to his/her legal status and rights (parts I–II of the law).

Protection of human dignity outside the criminal process is mainly the duty of Ombudspersons and includes the following: (a) Protection is provided through the Ombudsman in the framework of his/her general competence in protecting against human rights violations. He/she exercises a consultative role in monitoring human rights and holds mutual deliberations with NGOs and other human rights institutions, as well as close cooperation with similar institutions at the European and international level: L. 3/1991 (section 5). (b) Protection is provided through the Ombudsman against discrimination by taking measures promoting equality, monitoring their implementation and sanctioning violations of the respective provisions: L. 42(I)/2004 (sections 3, 5); (c) The Ombudsman is also competent to deal with discrimination related to work or employment or those related to social services or care, medical care, education and utilization of publicly accessible goods and services: L. 58(I)/2004 (section 13) and 59(I)/2004 (section 9). The Ombudsman intervenes after a complaint is filed in order to make suggestions to administration services (there is no competence vis-à-vis the President of the Republic or the Council of Ministers). These suggestions are not binding (the Office of the Ombudsman is a mediation institution), but the administration usually complies with them.

As to criminal law, there is no developed restorative justice system within its framework. Criminal law's principal aim is to punish the offender and protect the public interest rather than to restore the victim. However, the attorney general can, in the framework of the prerogatives entrusted to him/her according to Art. 113 of the Constitution, contact the victim, the perpetrator or their families before dealing further with the issue. There are two main fields of legislative interest regarding the victims' right to protection: (a) The Witnesses Protection Law (L. 95(I)/2001) provisions (especially protecting trafficking victims and family members) establish a

comprehensive scheme of protection of witnesses. Protection includes measures of physical protection applicable before, during and after trial; special procedural measures during trial that aim to counter threat, pressure, suffering or intimidation; and a "Protective Plan" that aims to serve the interests of the protected persons, to which the victim/witness can enter only with his/her consent and after confirmation by the attorney general. (b) Provisions are contained in the Anti-Domestic Violence Law, such as the separation of victims from their family, the delegation of their care to social workers and communication bans against the offender. Generally, and especially when legislation sensitive to the victims' protection applies, measures aimed at avoidance of undue delay or of investigation forms prone to overburden the victim are duly taken. The speedy character of the procedure regarding these domestic violence trials indirectly also serves this purpose. Victims may be accompanied by persons of their choice during the first contact with competent authorities as well as by a lawyer; they also have the right to undergo medical examination, if necessary. Victims' privacy may be protected through a court ruling prohibiting dissemination of the victim's personal data or crucial circumstances of the crime's commission; possibly through the decision for a trial "in camera", especially when this is in the interests of a child; and through self-restraint regarding the media. Decisions concerning individual assessment are taken according to each case under trial, whereby victim-sensitive laws may indicate a more meticulous treatment. As to victims with specific protection needs, in cases of sexual or other violence against a minor, the interview and testimony of the victim are conducted by persons of the same sex; the police record a child victim's testimony and present it to the court in the child's absence; and special measures can be taken in a context-sensitive manner, such as closed-doors proceedings, heavy police presence in the courtroom and/or use of video recorded testimonies. To avoid that such measures prove either insufficient or hyperbolic, a balanced decision has always to be made, taking under due consideration the principle of orality and the need to avoid prejudices on the one hand, and the need for proper arrangements for the victim's protection on the other. With regards to children, there is a wide scope of protective measures such as accompaniment, oversight, support and favourable legal assumptions (as to the Ombudsman, see also Neocleous 2009, p. 81). The rights of the victims to testify, be protected as vulnerable witnesses, and especially the rights of children to be accordingly protected are comprehensively provided for through L. 51(I)/2016. Also, budgetary care has been taken so that officers are trained in the skills required for the appropriate treatment of victims (parts III–IV of the law).With respect to underage victims of sexual abuse, exploitation and pornography, L. 91(I)/2014 provides for support, protection from the offender, witness protection, information, legal aid, and restitution and restriction of publicity of the criminal process (parts III–IV of the law). Prevention and officers' training are also distinctly provided for (part VI of the law).

Victims are not charged for the support given to them, neither are there any formal prerequisites for their access to the services. The state covers the expenses and provides the victim with every kind of support (protection, accommodation, food, tickets for travel to the victim's country, regular meetings with psychologists, free

legal services for those who cannot afford it, etc.). This assistance is usually provided by and through the relevant authorities such as the police or the Social Welfare Office, which has specialized staff. There are also NGOs that can support the victim. The structure of support services as laid down, especially in victim-sensitive laws such as the law against trafficking, contains detailed provisions including residence permits, the establishment of refuge shelters, rehabilitation programs, the right to decent repatriation, prohibition of indictment for acts the victim has been forced to commit under the circumstances, and qualified children's protection. There is also a specific law regarding compensation, apart from the general provisions or special regulations concerning specific victim categories, such as the trafficking of victims. This law concerns violent crime victims, sets certain conditions and requires application to the Director of the Social Insurance Services. Compensation includes medical care in public hospitals, sickness benefits in case of temporary incapacity to work, disability pensions in the event of diminished work ability, and pensions to dependant persons in the case of death and funeral expenses. The victims' property is returned to them through a court ruling at the end of the proceedings, normally in a non-time-consuming procedure. Law 51(I)/2016 provides for the victims' rights to reimbursement of expenses caused by participation in the procedure, to return of seized property and to restitution of damages suffered by the perpetrator (part III of the law).

It is noteworthy that the police offer services (since 2002) specifically addressing domestic violence and child abuse, helping victims and aiding in the elaboration of information concerning trafficking. The role of the Advisory Committee on Violence in the Family is also crucial. This service, to whom the victim may turn for help, was established pursuant to the Anti-Domestic Violence Law and staffed with persons selected from public and private sectors with knowledge and experience in matters relating to violence in the family. Victims are also provided with legal aid if they fulfil the criteria required by the Legal Aid Law (L. 165(I)/2002); that is, they are victims of human rights violations, such as those protected by the Constitution, the ECHR, the UN Human Rights Covenants, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the international conventions against racial discrimination and torture and for children's rights. Additionally, victims are part of proceedings against the Republic of Cyprus for its alleged failure to protect or respect them, in which case they may apply to receive legal aid, including free-of-charge consultation, assistance and representation (see sections 34, 40(3) of Anti-Trafficking Law 87(I)/2007; sections 2–8 of Legal Aid Law 165(I)/2002).

4.2 Protection from Entrapment and Self-Incrimination

Entrapment impacts human dignity. It does not constitute a defence in Cyprus, but only an alleviating circumstance. The decision of the SC, *A-G v Kanaris* 2 CLR 105 was crucial. In this case, police undercover agents took the initiative in imputing the defendant with allegations of drug dealing: after communications with him, he did traffic drugs and then confessed after he had been arrested. In the first instance the defendant was acquitted, but after the attorney general's appeal, the SC denied

entrapment on the grounds that the police organ acted upon the guidance of his superiors and under their supervision (i.e., not spontaneously and not without the relevant information concerning the defendant's involvement). The court held that the police did not set up the defendant because they acted in good faith and not abusively. The decision has been followed by jurisdiction (see e.g., SC, *Djemal Kasapoglou v The Police* (2005) 2 CLR 301).

Although in the *Kanaris* case the court did not overtly depart from the ECtHR precedent in *Teixeira de Castro v Portugal* (1998) 28 EHRR 101 (acknowledging entrapment whenever the events are provoked by the police and did not occur out of the suspect's own initiative), a change is obvious compared with cases such as SC, *Kattis* et al. *v The Republic* (2002) 2 CLR 262. There, the police had controlled trafficking of drugs by a suspect (previously arrested in possession of drugs) to the defendant, who was then also arrested. The majority considered the police's conduct as entrapment. The reasoning was that the drugs' "transition" through the police station had "poisoned" the evidence. What caused this change was the reference of the SC to the *Loosely* case, held before the House of Lords (*R v Loosely* (2001) UKHL 53). In that case, the scope of the application of entrapment was narrowed down to its core (i.e., to the clearly "instigative" conduct of an agent provocateur). Offers of the chance for crime no longer amount to entrapment. This holds even for systematically conducted secret "virtue tests" (like the case in *R v Christou* (1992) 4 All ER 559, where the police set up a "jewellery store", implying that it also functioned as a place for handling stolen goods, and registered all transactions). Supervision of police conduct carried out on the grounds of reasonable suspicion is sufficient. As Lord Hoffmann said in *Loosely*, "Closely linked with the question of whether the police were creating or detecting crime is the supervision of their activities. To allow policemen or controlled informers to undertake entrapment activities unsupervised carries great danger, not merely that they will try to improve their performances in court, but of oppression, extortion and corruption" (*R v Loosely* (2001) UKHL 53, at 60).

In parallel, police intrusions no longer have to remain "passive". In serious or organized crime cases, especially where criminal behaviour does not occur without an occasion, the police have to act. As Lord Hoffmann again stressed in *Loosely*, "A good deal of active behaviour in the course of an authorized operation may therefore be acceptable without crossing the boundary between causing the offence to be committed and providing an opportunity for the defendant to commit it" (*R v Loosely* (2001) UKHL 53, at 69). In the same case, Lord Hutton stated, "[A] request for drugs, even if it be persistent, need not be regarded as luring the drugs dealer into committing a crime [. . .] if a prosecution were not permitted in such circumstances, the combating of the illegal sale of drugs would be severely impeded" (*R v Loosely* (2001) UKHL 53, at 102). Thus, in narrowing entrapment and relaxing proportionality requirements, *Loosely* recapitulates what was sporadically encountered in earlier jurisdiction, such as the criteria concerning the authorities' conduct in *R v Smurthwaite and Gill* (1994) 98 Cr App R 437; the acceptance of the evidence on the grounds of the severity of the crime and the defendant's personality in *R v Latif and Shahzad* (1996) 1 WLR 104; or the distinction between provoking and opportunity providing in *Nottingham City Council v Amin* (2001) 1 WLR 1071. Without fully

returning to the spirit of *Sang* (1980) AC 402, which held the mode of acquiring evidence as totally irrelevant, the stance vis-à-vis the police has evidently become far more flexible (Papacharalambous 2015b, pp. 132–134; Papacharalambous 2014, pp. 428–430; Doak and McGourlay 2009, pp. 287–290, 302–307).

Analogously, one finds in *Kanaris* all that has resonated in prior SC jurisdiction, for example, in SC, *Kassar* et al. *v R* (1988) 2 CLR 96 (where it was held that entrapment during investigations into the drug scene may not even alleviate the sentence unless it consisted in an attempt of "exceptional persuasion") and in SC, *El-Etri* et al. *v R* (1985) 2 CLR 40 (concerning the necessity of intrusive police conduct in the drug scene, where communication is of paramount importance) (Papacharalambous 2015b, p. 135).

Cypriot jurisdiction has to find the proper balance as to when entrapment has to be affirmed. In any case, virtue tests, systematic luring, timely long supervision of professions, and exceptional intrusiveness of police behaviour are all positive candidates for the notion of entrapment, despite the importance of the context.

Such an approach would also conform to the need for grounding the protection against entrapment, not only with respect to fairness (Art. 6 ECHR) but also regarding the right against self-incrimination ("*nemo tenetur*" principle) (Androulakis 2004, p. 232; Papacharalambous 2015b, p. 137). Indeed, undermining the principle of *nemo tenetur* so much that a considerable part of entrapment would be viewed as tolerable intrusion, would lead too far. This is partly done in SC, *Republic v Avraamidou* et al. (2004) 2 CLR 51, where it was held that, unless the evidence induced is illegally or improperly obtained, "the constitutional right against self-incrimination is restrained to only 'oral' testimony and does not extend to any other 'real' evidence of which the defendant was the source". The court based its judgment on ECtHR judgments such as *Saunders v United Kingdom* (1997 23 EHRR 313) and *Heany & McGuinness v Ireland* (Appl. No. 34720/97 of 21 December 2000) (see Papacharalambous 2015b, p. 137 footnote 42; Charalambous 2015, p. 94; Loizou 2001, p. 208). As a matter of principle, the prohibition against self-incrimination is based on the "in dubio pro reo" principle (i.e., the presumption of innocence; Art. 12. 4 of the Constitution), as the prosecution bears the burden of proving the guilt of the defendant, who has the right to remain silent. A crucial form of this right is precisely the right against self-incrimination (see also SC, *President of the Republic ν House of Representatives (No 1)* (1994) 3 CLR 1). In SC, Psyllas v The Republic (2003) 2 CLR 353, the taking of DNA samples secretly and through machinations (i.e., deceptively, despite the suspect's refusal) rendered the evidence inadmissible. After Police Law 73(I) 2004 has been put in force, police may seek a judicial order for obtaining DNA samples (plus fingerprints, saliva, blood, urine, etc.) in spite of the suspect's non-consent (Art. 25 of the law) (Charalambous 2015, pp. 92–95; Papacharalambous 2014, p. 428). It is noteworthy that the ECtHR has to some degree "contextualized" the non-incrimination right; in *Murray v UK* (Appl. No. 18731/91) of 8 February 1996, the ECtHR decided that all is a matter of balancing, apart from the obligation of the police authority to inform the investigated person about the right itself and about his/her right to legal counsel (Paraskeva 2015, pp. 202–203, whereby reference is also made to a grave case of

violating non-incrimination, dealt with in ECtHR, *Allan v UK* [Appl. No. 48539/99] of 5 November 2002: "interrogation" of a detainee about his alleged crime by a would be co-inmate, who was actually an undercover police informer; on *Murray* see also Loizou 2001, p. 208).

4.3 Forced Confessions

Regarding forced confessions, Cyprus has followed the common law jurisdiction, which considers as inadmissible confessions suspected to have been obtained by oppression (*R v Baldry* (1852) 2 Den CC 430, *R v Thomson* (1893) 2 QB 12). Precedent has been constituted by *Ibrahim v R* 1914 AC 599, whereby such confessions were considered inadmissible as well as inherently unsafe; in *Kizil v The Queen* 1953 19 CLR 162, courts were warned to meticulously scrutinize confessions obtained after detentions for long periods of time. Clear references to the UDHR and the ECHR begin in the jurisdiction after 1960, for example in the case SC, *Miliotis v Police* 1966 2 CLR 63. From the jurisdiction since, one might stress SC, *Kokkinos ν Police* (1967) 2 CLR 217, where the defendant was maltreated during detention, and SC, *Ioannides v Republic* (1968) 2 CLR 169, where the confession was deemed unreliable due to promises given from the police to the detainee if he confessed. In SC, *Sakkos ν The Republic* (2000) 2 CLR 510 an oral confession was rejected as having been obtained through the defendant's answer to a question, despite his declared refusal to give written testimony before and after this statement. Forced statements by witnesses other than the defendant may also be inadmissible if they are the product of threats or maltreatment, as held in SC, *Eftapsoumis v Police* (1975) 2 CLR 149 (see Charalambous 2015, pp. 81–85; on the Cypriot legal stance as to illegally obtained evidence in general, see Clerides 2015, pp. 20–30).

5 Conclusions

Human dignity is protected in the Cypriot legal order on the basis of several fundamental rights and freedoms. Human dignity mainly legitimizes a *status negativus* of rights and is interpreted in Cyprus – more or less – in conformity with the ECtHR jurisdiction. In demanding areas of regulation of rights, (e.g., where tensions emerge between freedom of expression and hate speech), Cyprus rather successfully balances the fundamental character of the right, the new mission of rights protection that criminal policy is charged with, and the need to accept certain republican values (see Sect. 3). Human dignity also arises as crucial in certain areas (see Sect. 4), especially those concerning the criminal law system. Although Cyprus is characterized as a common law country, it considers human dignity as a "hypostasis" in a manner that echoes the spirit of continental law; in fact, in an archaic mode (i.e., as a "natural law" right). Human dignity also turns tentatively to found claims vis-à-vis private persons (see Sect. 2).

6 Cross-References

- ▶ Human Dignity in Germany
- ▶ Human Dignity in Great Britain and Northern Ireland
- ▶ Human Dignity in Greece
- ▶ Human Dignity in the EU

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