

THE PROTECTION OF HUMAN DIGNITY AND PERSONALITY RIGHTS IN THE CONTEXT OF CONFLICT OF LAWS

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Abstract: *Human dignity, as a core value of both international and domestic law, demands effective legal protection of personality rights in cross-border situations. This paper examines how private international law addresses conflicts of laws regarding violations of privacy, honor, image, and personal identity in a digitalized and globalized world. It explores the applicable law criteria (lex loci delicti, law of the domicile, party autonomy) and the limits of conflictual autonomy when fundamental rights are at stake. The paper suggests a balanced approach that reconciles state sovereignty with international imperatives regarding personality rights, especially in cases involving extraterritorial elements (e.g., online defamation, unauthorized image publication, commercial misuse of names).*

Key words: *human dignity, personality rights, applicable law, conflict of laws, cross-border protection*

1. Introduction

Human dignity constitutes the moral and legal foundation of all human rights and a unifying principle of contemporary legal orders. Both international and domestic systems recognise that the intrinsic worth of every person demands respect and legal protection.

In an era of global communication, digitalization, and transnational interactions, violations of personality rights—such as privacy, honour, image, and personal identity—frequently transcend borders, producing complex questions regarding applicable law, jurisdiction, and enforcement.

Private international law (PIL), traditionally designed as a neutral system for resolving conflicts of laws, must now respond to a normative imperative: to ensure that the dignity inherent in every human being remains protected irrespective of territorial boundaries. This article explores how PIL mechanisms can safeguard human dignity in cross-border contexts. It also examines the Romanian Civil Code as an illustrative example of integrating dignity and inherent human rights within a conflict-of-laws framework.

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Personality rights derive directly from this notion, encompassing a broad spectrum of non-patrimonial interests—privacy, image, honour, identity, and reputation. They are considered *inherent rights of the human being*, non-transferable and inalienable. This intrinsic link between dignity and personality finds a clear expression in the Romanian Civil Code, Article 58, which provides that “*Non-patrimonial rights are inherent to the human being and are inalienable.*” The provision acknowledges that such rights exist *ex lege* by virtue of human existence, not by virtue of state recognition or consent.

Consequently, the protection of personality rights is not merely a question of tort liability but a reflection of the ontological value of human dignity. As Peters (2021) observes, dignity functions both as a source and a limit of legal regulation, ensuring that personal autonomy is always exercised within the bounds of respect for others’ humanity.

2. The European Human Rights Framework

At the supranational level, the *European Convention on Human Rights* (ECHR) establishes the primary framework for protecting human dignity through personality rights. *Article 8* guarantees the right to respect for private and family life, home, and correspondence, while *Article 10* protects freedom of expression.

The *European Court of Human Rights* (ECtHR) has consistently held that these provisions must be balanced through a *proportionality test*, ensuring that freedom of expression does not unjustifiably encroach upon personal dignity (*Von Hannover v. Germany* (No. 2), 2012; *Axel Springer AG v. Germany*, 2012).

This balancing reflects the dual nature of dignity—as both a shield and a framework for freedom. The ECtHR’s jurisprudence has influenced national systems, including Romania, by integrating human dignity into the core of private law. Moreover, it indirectly shapes private international law by guiding how domestic courts interpret public policy (*ordre public international*) when foreign laws or judgments contradict the essential values of human rights.

The principal EU regulation governing obligations arising from lawful and unlawful juridical acts (juridical acts in the narrow sense) is Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007, commonly known as “Rome II”, which has been applicable since 11 January 2009.

At present, this European legislative instrument constitutes the general framework governing conflict-of-law rules applicable to non-contractual/extracontractual obligations. This EU legislative act sets out, particularly in its Preamble, the fields to which it applies (including the fields excluded from its scope), as well as the rationale (recitals) and the objectives for which it was enacted and adopted—rationale and objectives that are, to a considerable extent, identical or similar to those of the Rome I Regulation.

In drafting the conflict-of-law rules contained in the Rome II Regulation, the European legislator started from the major premise that the notion of non-contractual obligation is understood and regulated differently from one State to another. Accordingly, the Regulation seeks to define this concept as an autonomous one, detached from the domestic regulations of each Member State—an approach expressed in Recital 11 of the Preamble. The drafters of the Regulation took into account both the various juridical

acts and events that may constitute the source of non-contractual obligations governed by this legislative act and the persons who incur tortious liability, including in situations where strict (objective) liability is engaged.

By establishing uniform rules concerning the law applicable to non-contractual obligations, the issuer of the Regulation sought to avoid the risk of “distortions of competition between litigants within the Community” (Recital 13 of the Preamble), to achieve the aim of ensuring legal certainty, and to meet the need to do justice in individual cases. Likewise, the Regulation pursues the enhancement of the predictability of judicial decisions and the establishment of a reasonable balance between the interests of the parties to tortious legal relationships (between the author—the liable person—and the victim—the injured party).

3. Conflict of Laws and Personality Rights

The *Article 1(2)(g)* of the Rome II Regulation explicitly excludes obligations “arising out of violations of privacy and rights relating to personality, including defamation.” This exclusion has created a *regulatory vacuum*, leaving national courts to apply their domestic conflict rules (Mills, 2018; Kessedjian, 2017).

In response, the European Parliament proposed adding a new *Article 5a to Rome II*, suggesting that such cases be governed by “the law of the country in which the most significant element or elements of the loss or damage occur” (European Parliament, 2012). Nevertheless, the amendment has not been adopted, perpetuating legal fragmentation.

The determination of applicable law in cases of cross-border personality rights violations remains unsettled in European private international law.

The second paragraph of Article 2641 lays down a fundamental rule for resolving conflicts of laws that may arise from legal relationships based on lawful and/or unlawful juridical acts which lack connecting factors (relevant points of attachment): “in matters that do not fall within the scope of European Union regulations, the law governing the pre-existing legal relationship between the parties shall apply, unless otherwise provided by international conventions or by special provisions.”

Accordingly, in the view of the Romanian legislator in 2009, only the exceptional situations falling outside the scope of the Rome II Regulation are to be resolved in accordance with the rule set forth in paragraph 2.

Legal doctrine, concerned with identifying the categories of non-contractual obligations that are to be governed by the rule laid down in paragraph 2 of Article 2,641 of the Civil Code (namely those not subject to EU regulations), has taken the view that the following categories fall within the scope of this paragraph:

- ♦ Non-contractual obligations that are accessory to a pre-existing legal relationship between the parties, namely those listed in Article 1(2) of the Rome II Regulation as excluded from its application (such as obligations arising from family relationships; obligations arising from matrimonial property regimes; obligations arising from bills of exchange and other negotiable instruments; obligations arising from nuclear damage; obligations arising from infringements of the right to privacy; etc.).

- ♦ Non-contractual obligations falling within the scope of international conventions to which our country is a party;
- ♦ Non-contractual obligations governed by special statutory provisions that derogate from the general law.

Given that Article 1(2)(g) of the Rome II Regulation expressly excludes from its scope non-contractual obligations arising out of infringements of private life and personality rights (such as the right to freedom of expression, the right to privacy, the right to dignity, the right to honor and reputation, the right to one's own image, the right to respect for a deceased person with regard to his or her body and memory, and the right to respect for the wishes of a deceased person concerning his or her funeral and body), including defamation, it should be noted that Article 2642 of the Civil Code fills this regulatory gap by establishing, through its three paragraphs, certain special conflict-of-law rules.

A first rule is that set out in paragraph 1, which concerns the law applicable to claims for damages arising from infringements of private life (for an overview of the scope of infringements of private life, see, for example, Article 74 of the Romanian Civil Code regarding the inviolability of the home or residence, the interception of private conversations, the surveillance of a person's private life, the capturing of the image or voice of a person located in a private environment without his or her consent, provided that the person lawfully occupies that space, etc.) or of personality rights, where such infringements are committed through the use of the mass media or any other public means of communication.

In such situations, the injured person may choose between three categories of laws:

- the law of the State of the victim's habitual residence;
- the law of the State where the harmful result occurred;
- the law of the State in which the author of the wrongful act has his or her habitual residence, or, in the case of legal persons, their registered office.

In order for the victim to be able to opt for either the law of the State of habitual residence or the law of the State where the harmful result occurred (*lex loci læsionis*), paragraph 2 of Article 2642 imposes a subjective and special requirement: the victim of the unlawful interference must reasonably have expected (anticipated) that the effects of that interference would occur in one of the two States chosen. This is an objective criterion, assessed by reference to what any reasonable person in such circumstances would have foreseen.

It has been argued in legal doctrine that the purpose for which the legislator introduced this special requirement is to facilitate the application of the "third conflict-of-law rule, which leads to the law of the State of the author of the damage (Article 2642(1)(c))." The same author further contends that "this solution is justified by the need to avoid imposing excessive liability on the author (which the other applicable laws might establish), as well as by the fact that, in many cases, the law of the author coincides with the law of the seized court, being the law of the defendant in the action brought by the victim (Article 1065(1) of the Romanian Code of Civil Procedure)."

A final rule established by Article 2642 of the Civil Code concerns the so-called right of reply (*droit de réponse*), which must be granted to a person who has been the victim of

an infringement of personality rights committed through the mass media or through a publication. In this regard, paragraph 3 provides that: “The right of reply against infringements of personality rights is governed by the law of the State in which the publication appeared or from which the broadcast was transmitted.”

As follows from the literal and logical interpretation of the cited provisions, the right of reply, as a remedial mechanism for damage caused by such infringements, can be subject only to one category of law: the law of the State where the act infringing the personality rights was committed (*lex loci delicti commissi*).

This conflict-of-law solution naturally prevails, since the law entitled to determine the conditions under which the injurious publication or broadcast may be produced and disseminated is the law of the State where the publication appeared or from which the broadcast originated.

4. The Inapplicability of Party-Chosen Law to Personality Rights in Private International Law

One of the hallmarks of modern private international law is the principle of party autonomy—the freedom of individuals to choose the applicable law to their relationships. However, this autonomy finds natural limits in matters involving human dignity and personality. As *Rome II* clarifies, such rights fall outside the domain of contractual freedom (Recital 32).

From a philosophical and normative perspective, the inherent rights of the human being cannot be disposed of by will, contract, or agreement. Article 58 of the Romanian Civil Code, by declaring such rights inalienable, effectively imposes a *substantive limit* on private autonomy.

In international contexts, this limit operates as a manifestation of *international public policy*—a mandatory standard overriding foreign norms that would otherwise apply under conflict rules (Basedow, 2015).

This principle aligns with broader European jurisprudence. For instance, the ECtHR has repeatedly emphasised that states must ensure effective remedies against violations of dignity, even when such violations arise from private actors (*Delfi AS v. Estonia*, 2015).

Thus, private international law must reconcile the freedom of choice with the non-derogable status of inherent human rights.

5. Corrective Solutions for Safeguarding Fundamental Rights

The international public policy of private international law plays a crucial corrective role in ensuring that foreign law does not produce results incompatible with the forum’s conception of human dignity. According to Article 8 ECHR and the doctrine developed in *Axel Springer AG and Von Hannover*, freedom of expression must yield where personal integrity and privacy are seriously infringed.

When applied in conflict-of-laws situations, this doctrine means that a court may refuse to apply a foreign law—or to recognize a foreign judgment—that tolerates unjustifiable violations of dignity.

This function of *ordre public* has been widely recognized in European scholarship (Lagarde, 2019; Kono, 2020).

In the Romanian system, the combination of Articles 58 and 2577 of the Civil Code ensures that even if a foreign law governs the facts, its application is limited by the inalienable nature of personality rights.

Hence, dignity operates as both a *substantive standard* and a *conflict-override principle*—ensuring that the essence of human rights prevails over the formal operation of connecting factors.

6. Conclusions

In the digital era, personality rights face a paradox: the borderless nature of the internet amplifies both exposure and jurisdictional complexity. A defamatory statement or an image posted online may cause harm in multiple states simultaneously. The traditional *mosaic approach*, which allows each jurisdiction to assess damages for harm suffered within its territory, has proven inadequate (Kono, 2020).

Instead, the “center of interests” doctrine, as recognized by the CJEU, offers a human-centered alternative, anchoring jurisdiction and applicable law to the individual’s social and professional nexus. This approach resonates with data protection law, particularly the *General Data Protection Regulation* (GDPR), which extends extraterritorial protection to personal data as an expression of human dignity (Peters, 2021). Romanian law’s reliance on *lex personalis* (Art. 2577 Civil Code) harmonizes with this perspective, as both privilege the personal connection over geographic happenstance.

The convergence between GDPR principles and PIL demonstrates the growing unity of public and private international law around the value of human dignity.

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