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Research Article

## POST-MORTEM JUSTICE: HUMAN DIGNITY AND LEGAL PROTECTIONS IN THE EUROPEAN UNION

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### ABSTRACT

**Background:** The handling of bodies after death has increasingly become a controversial topic in European legal discourse, not least at the crossroads of human dignity, data protection, and forensic justice. Although human dignity is enshrined as one of the fundamental principles offered for protection under EU law, the exploration of such a principle and its extension to post-mortem interests is patchy and divergent within different Member States. The article (i) assesses whether, in the European legal framework, human dignity has justiciable implications beyond death; and (ii) examines how the EU might reconcile growing expectations regarding post-mortem rights in the context of digitalised warfare, big data and hybrid conflicts. To illustrate these challenges in practice, the analysis incorporates Ukraine as a contextual case study, where the Russia–Ukraine armed conflict has exposed large-scale casualties, the digital dissemination of images of deceased persons, and the limitations of existing European protection mechanisms.

**Methods:** The paper presents a comparative legal analysis of EU law, specific legislation in selected Member States, and limitations in international human rights norms with a focus on the jurisdiction of the European Court of Human Rights. It also builds on interdisciplinary research, bringing together legal doctrine, bioethics, and the study of digital governance. The methodology is predominantly doctrinal and analytical, supported with cases illustrating different national approaches to the protection of posthumous dignity and rights.

**Results and Conclusions:** The article highlights that EU law lacks a systematised framework for post-mortem dignity, thus leaving Member States free to regulate in a fragmented and sometimes contradictory manner. National solutions vary considerably, from strong protection of post-mortem personality rights with specific remedies (Germany, France) to the lack of any existing legal remedy (United Kingdom). This continuing digital legacy in contemporary wars—illustrated by the case of Ukraine, where mass graves and images of deceased persons distributed online have raised urgent concerns—points to the limitations of current mechanisms, including the GDPR and the Digital Services Act. These trends indicate that the EU could adopt deeper integration, integrating non-binding legislative and judicial cooperation instruments, in line with prevailing international standards, with a view to reducing an identified gap between the formal recognition of human dignity and its effective post-mortem protection.

## 1 INTRODUCTION

The legal and philosophical underpinnings of post-mortem dignity can be found in the more general notion of human dignity, which has been at the heart of human rights discussions since the Universal Declaration of Human Rights.<sup>1</sup>

The question is whether dignity persists after death, even though it is usually associated with living human beings. According to Kantian philosophy, autonomy and rational agency are equated with dignity, **implying that the dead, lacking these qualities, are deprived of dignity**. Writers such as Scarre disagree with this suggestion on the basis that “memory and respectful treatment of human remains” are symbolic ways in which dignity continues.<sup>2</sup> Legal systems are significantly affected by this view, particularly regarding digital inheritance, burial rights and forensic investigations.<sup>3</sup>

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1 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217A) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 26 September 2025.

2 Geoffrey Scarre, ‘Archaeology and Respect for the Dead’ (2003) 20(3) Journal of Applied Philosophy 237. doi:10.1046/J.0264-3758.2003.00250.X.

3 Lydia de Tienda Palop and Brais X Currás, ‘The Dignity of the Dead: Ethical Reflections on the Archaeology of Human Remains’ in Kirsty Squires, David Errickson and Nicholas Márquez-Grant (eds), *Ethical Approaches to Human Remains: A Global Challenge in Bioarchaeology and Forensic Anthropology* (Springer 2019) 19. doi:10.1007/978-3-030-32926-6\_2.

As these debates increasingly arise in the context of contemporary armed conflicts, the article uses Ukraine as an illustrative case study. The Russia–Ukraine armed conflict has produced extensive documentation of mass casualties, significant forensic obstacles and the widespread digital circulation of images of deceased persons. These developments offer a particularly relevant backdrop for examining the interaction between post-mortem dignity, digital exploitation and the limitations of the current European legal framework.

In crisis settings, post-mortem questions intersect doctrinally with human rights, extending beyond traditional life-bound interests. The dissemination of images of deceased persons raises identifiable legal issues concerning posthumous privacy, reputation, and data governance, including in contexts of propaganda and disinformation on weakly moderated platforms.

Similarly, the practices of identifying victims of disasters, migration crises and the investigation of war crimes require a balance between forensic procedures, legal accountability and cultural sensitivity. In addition, the commercialisation of the dead human body—for artistic purposes, educational projects or scientific research—raises issues of possible exploitation and challenges established legal concepts of dignity.

Although the primary focus of international human rights regimes remains on the living, emerging legal arguments suggest that post-mortem reputation and symbolic dignity also deserve protection. What are the main obstacles to harmonising EU legislative frameworks on post-mortem dignity? This study will assess whether current EU data protection legislation is adequate to regulate posthumous digital presence and privacy, given the importance of social media, artificial intelligence-generated content and digital memories.

While this study primarily focuses on the European legal framework, it includes Ukraine as an illustrative example of how post-mortem dignity is challenged in contemporary conflicts. Future research may extend this analysis to other contexts, such as the management of mass graves in the former Yugoslavia, to provide a broader comparative perspective on the role of forensic investigations in accountability for war crimes and the influence of digital platforms on posthumous rights.

## 2 LITERATURE REVIEW. INTERDISCIPLINARY PERSPECTIVES ON POST-MORTEM DIGNITY

The study of post-mortem dignity flows from a number of disciplinary lines, each covering a different aspect of how the dead preserve important moral, symbolic, and legal legacies.

For philosophers, the challenge of Kant's insistence that human beings must never be reduced to mere instruments is a starting point for arguments—an idea several scholars go beyond even death, based on which an interest in the dignity of human remains grows into

moral inquiry and respect for human remains is justified as a matter of interest.<sup>4</sup> Others have maintained that dignity is exclusively reserved for the living and cannot really last after death.<sup>5</sup> Later ethical writings draw attention to the symbolic importance of death rituals and the enduring value society places on the deceased. According to Scarre, respect for the remains is not only an obligation of the ritualists but is a sign of their worth to persons through time.<sup>6</sup> In the same way, Tienda Palop and Currás point out, in archaeology there is an ethical tension between scientific investigation and respect for the body of the dead.<sup>7</sup>

Recent studies—particularly in the area of Eastern European transitional justice—indicate a rise in interest in posthumous rights in an environment where the phrase "post-mortem justice" is not overtly used. Kvit discusses posthumous reproductive law uncertainties in the context of wartime Ukraine, arguing for clear systems to accommodate the reproductive rights of dead soldiers.<sup>8</sup> B. Abdurrahmani and T. Abdurrahmani investigate modes of truth-telling in post-communist Albania and demonstrate how the unresolved disappearances and unidentified remains still affect memory, justice and social reconciliation.<sup>9</sup> Related literature on unrelated areas, such as Makaускаite-Samuole's analysis of transparency obligations articulated in the EU AI Act, also touches on the post-mortem implications of technology regulation, suggesting the cross-sectoral nature of the concern.<sup>10</sup>

ECtHR jurisprudence offers indirect but increasingly relevant protection against post-death dignity damage, particularly regarding burial rights, exhumation, and the emotional integrity of members of the deceased family.<sup>11</sup> Further down the line, digital inheritance literature also highlights the challenges associated with identity, data, and memory protection after death. Given that deceased persons are explicitly excluded from the scope of GDPR (Recital 27),<sup>12</sup>

4 Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Mary Gregor tr, ed, CUP 1997).

5 John Harris, *The Value of Life: An Introduction to Medical Ethics* (Routledge 1985).

6 Scarre (n 2).

7 Tienda Palop and Currás (n 3).

8 Nataliia Kvit, 'Prospects for Regulating the Right to Posthumous Reproduction in the Context of War in Ukraine: Foreign Experience and Formation of Legal Support for the Realisation of Reproductive Rights of Military Personnel' (2023) 6(2) *Access to Justice in Eastern Europe* 82. doi:10.33327/AJEE-18-6.2-a000222.

9 Bledar Abdurrahmani and Tidita Abdurrahmani, "Truth Revelation Instruments in Post-Communist Albania: Transitional Justice Non-Feasance in Investigating Communist Crimes and the Fate of Missing Persons" (2024) 7(2) *Access to Justice in Eastern Europe* 10. doi:10.33327/AJEE-18-7.2-a000215.

10 Gintare Makaускаite-Samuole, 'Transparency in the Labyrinths of the EU AI Act: Smart or Disbalanced?' (2025) 8(2) *Access to Justice in Eastern Europe* 1. doi:10.33327/AJEE-18-8.2-a000105.

11 *Sabanchiyeva and Others v Russia* App no 38450/05 (ECtHR, 6 June 2013) <<https://hudoc.echr.coe.int/eng?i=001-120070>> accessed 26 September 2025.

12 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons With Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation - GDPR) [2016] OJ L 119/1, recital 27; Remigius N Nwabueze and Matthew White, 'Privacy and Death Law – a Reappraisal' (2024) 16(2) *Journal of Media Law* 468. doi:10.1080/17577632.2024.2438395.

scholars such as Harbinja,<sup>13</sup> Buitelaar,<sup>14</sup> Allen and Rothman<sup>15</sup> argue that “post-mortem privacy” is a natural extension of the privacy and dignity interests held during life, which continue to have legal and ethical relevance after death, notwithstanding the GDPR’s explicit exclusion of deceased persons. Cases such as *In re Ellsworth* exemplify the practical realities for families when digital platforms prioritise contractual obligations over family dignity or interests.<sup>16</sup> To address this regulatory gap, scholars suggest drawing on end-of-life legal instruments—most notably living wills—as a basis for hybrid statutory and contractual mechanisms that could govern post-mortem digital rights.

The forensic anthropology and humanitarian law-based research, such as Finegan et al.,<sup>17</sup> Gillett and Fan,<sup>18</sup> and Guarascio et al.,<sup>19</sup> document the forensic procedures, humanitarian obligations, and ethical challenges involved in managing human remains during armed conflicts and large-scale fatality incidents. International frameworks such as the Bournemouth Protocol set standards for the identification, chain of custody, respectful handling of, and protection for bodies and mass graves.<sup>20</sup> Complementing these, the United Nations Minnesota Protocol on the Investigation of Potentially Unlawful Death establishes internationally recognised minimum requirements for the documentation, recovery and forensic examination of the dead, including safeguards for dignity, transparency, and accountability in conflict-related deaths.<sup>21</sup> This literature embeds dignity in the practical and highlights how forensic truth-seeking, family rights, and cultural practices intertwine when bodies must be recovered, acknowledged, and repatriated.

A closing body of writing considers how contemporary warfare, most notably Russia’s war in Ukraine, has changed how the dead operate digitally. Astuti et al., for example, study how

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- 13 Edina Harbinja, ‘Post-Mortem Privacy 2.0: Theory, Law, and Technology’ (2017) 31(1) *International Review of Law, Computers & Technology* 26. doi:10.1080/13600869.2017.1275116.
  - 14 JC Buitelaar, ‘Post-Mortem Privacy and Informational Self-Determination’ (2017) 19(2) *Ethics and Information Technology* 129. doi:10.1007/s10676-017-9421-9.
  - 15 Anita L Allen and Jennifer E Rothman, ‘Postmortem Privacy’ (2024) 123(2) *Michigan Law Review* 285. doi:10.36644/mlr.123.2.postmortem.
  - 16 *Estate of Ellsworth* No 2005-296, 651-DE (Michigan Probate Court, 4 March 2005); Rebecca G Cummings, ‘The Case Against Access to Decedents’ E-mail: Password Protection as an Exercise of the Right to Destroy’ (2014) 15(2) *Minnesota Journal of Law, Science & Technology* 897.
  - 17 Oran Finegan and others, ‘International Committee of the Red Cross (ICRC): General Guidance for the Management of the Dead Related to COVID-19 (2020) 2 *Forensic Science International: Synergy* 129. doi:10.1016/j.fs SYN.2020.03.007.
  - 18 Matthew Gillett and Wallace Fan, ‘Expert Evidence and Digital Open Source Information’ (2023) 21(4) *Journal of International Criminal Justice* 661. doi:10.1093/jicj/mqad050.
  - 19 Dario Guarascio, Andrea Coveri and Claudio Cozza, ‘War in the Time of Digital Platforms’ (*Social Europe*, 10 January 2023) <<https://www.socialeurope.eu/war-in-the-time-of-digital-platforms>> accessed 14 March 2025.
  - 20 Melanie Klinkner and Ellie Smith, *The Bournemouth Protocol on Mass Grave Protection and Investigation* (Bournemouth University 2020).
  - 21 OHCHR, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death* (2016) (UN 2017).

graphic images propagate widely on social media as a weapon of propaganda, harassment or psychological warfare.<sup>22</sup> However, scholars have not shied away from acknowledging the limitations of platform governance and the growing use of OSINT methods to verify war crimes, even within institutional European responses (EUvsDisinfo, East StratCom Task Force).<sup>23</sup> These trends disclose how representations of the dead are made into weapons at the digital level, and the way that dissemination undermines established legal and ethical foundations of honour with respect to dignity in the time of war.

Consisting of five recurring themes, the literature demonstrates convergence on the recognition that a more coherent conceptualisation and regulation of post-mortem dignity are required. However, a unified body of literature has yet to establish such a system under the term “post-mortem justice.” Instead, what exists are a variety of philosophical arguments, human-rights doctrines, digital governance disputes, forensic standards and evidence related to conflicts in a parallel pattern, drawing toward the same normative void in European law.

### 3 METHODOLOGY AND RESEARCH METHODS

This article combines doctrinal analysis and a comparative approach to the treatment of dignity and justice post-mortem in European and international law. The methodology integrates: (i) a theoretical discussion based on the philosophical literature on human dignity<sup>24</sup> (e.g. Kantian ethics) and contemporary debates on posthumous interests;<sup>25</sup> (ii) a comparative analysis of national legislation on post-mortem data, digital heritage and the treatment of human remains;<sup>26</sup> (iii) an analysis of the case law of the European Court of Human Rights on exhumations, burial rights and the rights of relatives;<sup>27</sup> and (iv) a contextual analysis of mass graves in the Balkans and the digital circulation of images of the dead during the Russia-Ukraine conflict.

The study does not include interviews or empirical surveys; its method is hermeneutic and text-based. A major limitation is that most sources come from European jurisdictions, which limits universal generalisation. However, the results aim to demonstrate the existence of a normative gap and support the emergence of post-mortem justice as a principle of European law.

22 Yanti Dwi Astuti, Rahmah Attaymini and Maya Sandra Rosita Dewi, ‘Digital Media and War: Social Media as a Propaganda Tool for the Russia-Ukraine Conflict in the Post-truth Era’ (Advances in Social Science, Education and Humanities Research, Proceedings of the Annual International Conference on Social Science and Humanities (AICOSH 2022)) 19. doi:10.2991/978-2-494069-87-9\_4.

23 *EUvsDisinfo* <<https://euvsdisinfo.eu>> accessed 25 September 2025; *DisinfoChronicle* <<https://disinfo.detector.media>> accessed 25 September 2025.

24 Kant (n 4).

25 Scarre (n 2).

26 Tienda Palop and Currás (n 3).

27 *Sabanchiyeva and Others v Russia* (n 11).

To ensure methodological transparency, the selection of jurisdictions (France, Germany, Lithuania, Slovenia, the United Kingdom and Moldova) followed cumulative criteria: normative diversity, relevance to post-mortem personality rights, and the presence of either strengthened protections or significant legislative gaps. The ECtHR cases were chosen for their explicit involvement in post-mortem dignity or in relatives' rights under Article 8 of the ECHR.<sup>28</sup> The analysis of Ukrainian digital materials was based exclusively on open-source content disseminated between 2022 and 2024 on publicly accessible Telegram channels. These materials were correlated with investigations carried out by NGOs, international media and OSINT researchers and were included only when they showed clear implications for post-mortem dignity in armed conflicts.

During the analysis of digital content from the war, ethical safeguards were applied. Only publicly available materials were examined, and no personally identifiable data of victims or their relatives was collected, stored, or analysed. Graphic content was reviewed with restrictive criteria and included only when necessary to illustrate models relevant to post-mortem dignity; materials that risked unnecessary exposure of victims were excluded. Authenticity was assessed using open-source verification methods, including correlation with NGO reports, international media investigations and OSINT repositories. No unreported illegal content was identified during the research process, and all analysed materials concerned events already documented by recognised investigative bodies.

By combining doctrinal, comparative and contextual analyses, the study tests normative concepts against concrete legal and technological realities and highlights structural divergences that may guide future harmonisation efforts at the EU level.

## 4 RESULTS AND DISCUSSIONS

### 4.1. Comparative Legal Frameworks on Post-mortem Dignity in the EU

The post-mortem status of individuals in EU law is a complex and evolving notion, particularly with respect to data protection, human dignity, and personal information. As for the dead, they have no explicit rights under GDPR, yet some EU Member States have introduced national rules to provide certain safeguards for post-mortem data. Finally, legal scholarship remains divided and unclear regarding the posthumous disposition of biometric data, digital legacy, and personal dignity.

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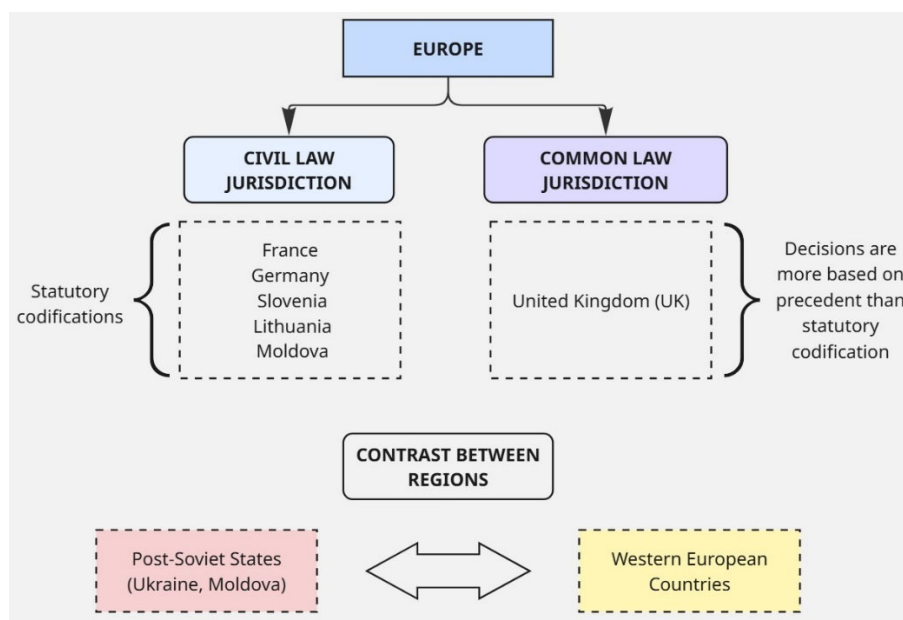
28 Council of Europe, *European Convention on Human Rights* (Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols) (ECHR 2013) art 8.



## 4.2. Post-mortem Dignity in EU and National Legal Frameworks

For the sake of clarity, however, this study makes a distinction between civil jurisdictions like France, Germany, Ireland, Slovenia, Lithuania, and Moldova, which are codified civil-law jurisdictions where post-mortem rights are generally provided for in comprehensive statutory codes, and those countries that are unifying under common law principles, such as the UK, in this regard.

Such differences have implications for how all aspects of post-mortem dignity should be viewed. There are other contrasts within this divide. For example, post-Soviet legal systems in the sample display residual procedural features and drafting ambiguities identified in prior commentary; by contrast, Western European jurisdictions tend to articulate post-mortem issues within constitutional and ECtHR-informed frameworks. These historical, cultural, and procedural divergences show why a comparative framework is needed to capture how different European countries establish or preserve post-mortem dignity.



*Figure 1. Comparative frameworks on post-mortem dignity<sup>29</sup>*

The principle of human dignity is a cornerstone of EU law, enshrined in Article 1 of the Charter of Fundamental Rights of the European Union.<sup>30</sup> However, its scope is limited to the living, leaving unresolved whether dignity continues after death. This lacuna is reflected

<sup>29</sup> Figure 1 is the authors' own elaboration.

<sup>30</sup> Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art 1.



in the General Data Protection Regulation (GDPR), which explicitly excludes deceased persons (Recital 27),<sup>31</sup> leaving Member States to regulate posthumous data and digital identities. Recent analyses continue to underline the regulatory lacuna for deceased persons' data, despite limited national carve-outs.

While France grants individuals the right to determine the fate of their digital legacy through the 2016 Digital Republic Act,<sup>32</sup> Slovenia restricts the disclosure of posthumous data to heirs or research institutions, provided the deceased did not object to it in life.<sup>33</sup> By contrast, most Member States still lack clear legal frameworks, resulting in a fragmented landscape of protections. The absence of harmonisation is particularly visible in the treatment of biometric data, digital inheritance, and personal dignity after death.<sup>34</sup>

International human rights instruments, particularly the European Convention on Human Rights (ECHR), provide indirect protection. The European Court of Human Rights (ECtHR) has held that state actions concerning the dignity and memory of the dead may affect the rights of surviving relatives under Article 8 (private and family life). In *Sargsyan v. Azerbaijan*,<sup>35</sup> the Court recognised denial of access to family graves as a violation of Article 8,<sup>36</sup> while in *ML v. Slovakia*,<sup>37</sup> defamatory statements about the deceased were deemed to impact the privacy and reputation of relatives.<sup>38</sup> Similarly, end-of-life cases such as *Lambert v. France*<sup>39</sup> have reaffirmed that human dignity must be safeguarded irrespective of medical condition, including in states of persistent vegetative state (PVS).<sup>40</sup>

31 Regulation (EU) 2016/679 (n 12) recital 27.

32 Law of the French Republic No 2016-1321 of 7 October 2016 on Digital Republic 'Pour une République numérique' [2016] JORF 235 <<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033202746>> accessed 25 September 2025.

33 Personal Data Protection Act of the Republic of Slovenia 'Zakon o varstvu osebnih podatkov' (ZVOP-1) [2004] Uradni list RS 86 (unofficial consolidated text no 5) <<https://pisrs.si/pregledPredpisa?id=ZAKO3906>> accessed 25 September 2025.

34 David Erdos, 'Dead Ringers? Legal Persons and the Deceased in European Data Protection Law' (2020) 40 Computer Law & Security Review 105495. doi:10.1016/j.clsr.2020.105495.

35 *Sargsyan v Azerbaijan* App no 40167/06 (ECtHR, 16 June 2015) <<https://hudoc.echr.coe.int/eng?i=001-155662>> accessed 3 March 2025.

36 The ruling confirms that dignity after death may only be protected indirectly, via the rights of the living, revealing the doctrinal gap in EU law where no direct posthumous rights are articulated.

37 *ML v Slovakia* App no 34159/17 (ECtHR, 14 October 2021) <<https://hudoc.echr.coe.int/eng?i=001-212150>> accessed 3 March 2025.

38 This reinforces the point that European protection remains derivative and fragmented, dependent on family members' rights rather than a recognition of the deceased as rights-bearing subjects.

39 *Lambert and Others v France* App no 46043/14 (ECtHR, 5 June 2015) <<https://hudoc.echr.coe.int/fre?i=001-155352>> accessed 3 March 2025.

40 Persistent Vegetative State. It is a medical diagnosis that designates a condition in which a person is awake, but there are no signs of self-awareness or awareness of the environment. In the case law of the ECHR and other European courts, the term appears in cases concerning the right to life, human dignity and the right to a dignified death, for example, in cases related to the disconnection of the device or medical care in terminal situations.

A key structural tension in the European framework concerns the intersection between Article 8 and Article 10 of the ECHR. Although the Court does not recognise autonomous rights of the deceased, the treatment of the body and the preservation of the deceased's memory fall within the scope of Article 8 through their impact on the dignity, emotional integrity and identity of surviving relatives. Conversely, the dissemination of images of deceased persons—whether through traditional media or digital platforms—engages freedom of expression and the public's right to information under Article 10, creating a conflict between privacy-based protection and press/public interest considerations.

Although originally developed for cases involving living claimants, these balancing criteria, by analogy, guide the Court's assessment of images of deceased persons when their dissemination affects the private life, cultural identity, or emotional integrity of surviving relatives.

In its landmark judgments *Axel Springer AG v. Germany*<sup>41</sup> and *Von Hannover v. Germany*,<sup>42</sup> the Court developed a set of balancing criteria that, although originally applied to living individuals, operate *mutatis mutandis* in post-mortem contexts. These include the contribution to a matter of public interest, the degree of identifiability, the circumstances in which the material was obtained, the claimant's prior conduct, and the severity of the interference with dignity. When applied to images of deceased persons—particularly graphic, decontextualised or propagandistic materials - these criteria demonstrate that the public interest alone cannot justify symbolic harm to dignity or emotional harm inflicted on surviving relatives. This confirms that post-mortem dignity receives functional protection through Article 8, even though the Convention does not explicitly regulate the dead.

The ECtHR has since developed an interpretative approach that does not explicitly translate to “post-mortem dignity,” however, it recognises that the treatment of the dead remains legally relevant under the Convention. In consequence, the Court can neither recognise posthumous rights in an absolute sense (as the ECHR is based solely on the rights of those currently living). Nonetheless, its case law reflects a fairly consistent recognition that the process of a body being handled, identified, returned, or interred can affect an individual's posthumous dignity, through the rights, emotions, and cultural identity of all those who survive it.

*Lambert v. France* does not address post-mortem rights, but it is useful for reading the Court's conception of human dignity more broadly.<sup>43</sup> In such a case, the ECtHR addressed end-of-life questions regarding a patient in a persistent vegetative state and held that,

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41 *Axel Springer AG v Germany* App no 39954/08 (ECtHR, 7 February 2012) <<https://hudoc.echr.coe.int/fre?i=001-109034>> accessed 3 March 2025.

42 *Von Hannover v Germany (No 2)* Apps nos 40660/08 and 60641/08 (ECtHR, 7 February 2012) <<https://hudoc.echr.coe.int/fre?i=001-109029>> accessed 3 March 2025.

43 *Lambert and Others v France* (n 39).

irrespective of an individual's physical or cognitive status, human dignity must remain protected. Although the judgment concerns a living patient, its reasoning—that dignity must guide all humane treatment—suggests that this requirement does not simply vanish at the moment of death. *Sabanchiyeva and Others v. Russia* is a clear example where the authorities refused to take back a person's remains for burial and hid information about where this body lay.<sup>44</sup> The Court ruled this was illegal under Article 8, underlining family obligations, on grounds of personal, religious and cultural tradition, to bury their dead. The case demonstrates a basic tenet: the State's interference in human remains is not just an administrative or public order issue but also possibly a violation not only of the dignity of the dead but also of the living. By connecting the treatment of the deceased and the emotional and moral character of their relatives implicitly, the Court acknowledges that dignity does not simply vanish at the point of death.

Similar reasoning emerged in *Sargsyan v. Azerbaijan*, in which the Court found that preventing a family from accessing and maintaining graves in a conflict-affected territory violated Article 8. Graves are much more than just places to bury people; they are sites on which identity, continuity, and the enduring connection between living families and their dead members are secured.<sup>45</sup> For the living, therefore, denial of access means denial of the memories they have and their ability to honour the dead as well as to keep their cultural and spiritual connections. This is again consistent with the Court's position that respect for the dead, including their place of burial, is part of human dignity that is indirectly safeguarded by the rights of those left behind. Altogether, the current cases illustrate a common theme: the ECtHR protects post-mortem dignity by examining State behaviour in the context of human dignity, cultural identity, and the emotional integrity of the living. Even without specifically identifying Convention rights for the dead, the Court's case law makes clear that the disposal and handling of bodies, funerary customs and memorials have a legal and moral content. This body of case law lays down essential groundwork for acknowledging post-mortem dignity as a core value embedded within European human-rights standards. Also, it establishes the jurisprudence on the necessity of clearer, more harmonised protection in EU law.

This jurisprudence illustrates that the ECtHR treats post-mortem dignity as an extension of the rights of the living, especially in relation to family life and cultural or religious practices. The cases demonstrate a functional recognition of posthumous dignity, even if the Convention does not explicitly regulate the status of the deceased. This approach strengthens the argument that post-mortem dignity should be conceptualised as a protected value within European human rights law and supports the article's broader finding that the EU lacks a harmonised framework capable of reflecting the Court's evolving standards.

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44 *Sabanchiyeva and Others v. Russia* (n 11).

45 *Sargsyan v. Azerbaijan* (n 35).

In the UK, ecclesiastical law still requires episcopal faculty for exhumations in consecrated spaces,<sup>46</sup> while Northern Europe increasingly regulates burial through secular principles of equality and pluralism.<sup>47</sup> Islamic law, influential in Bosnia and elsewhere, forbids exhumation except where necessary to identify victims of mass atrocities,<sup>48</sup> reflecting the overlap of dignity, religion, and humanitarian necessity.

Across Europe, the trend is a gradual shift from ecclesiastical to civil responsibility for funeral and exhumation practices, with increasing emphasis on pluralism, equality, and human rights. Yet divergences remain wide, shaped by cultural traditions, historical experiences of dictatorship or conflict, and national attitudes towards privacy, dignity, and forensic truth-seeking.

At the national level, approaches remain diverse. In Ukraine, Article 239 of the Criminal Procedure Code outlines a clear procedure for exhumations, which requires prosecutorial authorisation and forensic supervision. In contrast, Moldova's vague terminology in criminal procedure hampers proper forensic practice.<sup>49</sup> Lithuania links exhumation rules to heritage and memory laws, mandating archaeological and forensic expertise, especially for remains from the Soviet era.<sup>50</sup> This case illustrates that national frameworks can ensure rigorous standards in forensic investigations, but the lack of EU-level rules leaves cross-border situations without consistent guarantees of post-mortem dignity.

### 4.3. Legal and Political Challenges in Establishing a Harmonised Framework

There has been growing awareness in European discussions that the legal status of the deceased, as far as the EU is concerned, needs clarification. This is especially important given the growing concerns between jurisdictions, particularly in the context of increased cross-border practices in burial, digital identity and forensic practice, as well as various forensic protocols and the need to clarify the legal status of dead persons. Human dignity, rooted in the constitutional traditions common to all EU Member States and expressly affirmed in the Treaties, finds clear normative expression in Article 1 of the Charter of

46 Rupert Bursell, 'Aspects of Burial and Exhumation' (2017) 19(2) Ecclesiastical Law Journal 169. doi:10.1017/S0956618X17000059.

47 Helena Nordh and others, 'Rules, Norms and Practices: A Comparative Study Exploring Disposal Practices and Facilities in Northern Europe' (2021) 88(1) OMEGA 171. doi:10.1177/00302228211042.

48 Julie Lefolle, 'Identification of the Dead Under Islamic Law and International Humanitarian Law: A Mini Review' (2022) 10(2) Malaysian Journal of Syariah and Law 38. doi:10.33102/mjssl.vol10no2.394.

49 Dinu Ostavciuc and Constantin Rusnac, 'Legislative, Doctrinal and Practical Challenges Regarding the Examination of the Body at the Scene in the Republic of Moldova' (2024) 18(2) AGORA International Journal of Juridical Sciences 124. doi:10.15837/aijjs.v18i2.6983.

50 Gediminas Petrauskas, Lijana Muradian and Augustina Kurilienė, 'Archaeology of Modern Conflict and Heritage Legislation in Lithuania During Thirty Years of Restored Independence' in Alex Hale and Thomas Kersting (eds), *New Challenges: Archaeological Heritage Management and the Archaeology of the 18th to 20th centuries* (Occasional Paper no 19, EAC 2024) 81. doi:10.11141/ia.66.13.

Fundamental Rights of the European Union. However, efforts to develop a uniform standard of protection at the EU level have encountered cultural, doctrinal and political resistance. This is a reminder that the legal determination of death, burial, and post-mortem identity under the sun and national sovereignty are interlinked with national, historical, and cultural identity. More often than not, therefore, dignity serves as a nominal constitutional value, not a real post-mortem right and its practical consequences are largely determined by domestic legal culture.<sup>51</sup>

In civil-law systems, personality rights extend to the deceased themselves, allowing relatives to preserve the deceased's honour, reputation, and image. French law, based on the principle of *droits moraux*, grants heirs the right to sue in instances of defamation, the abuse of an image, or assault on memory.<sup>52</sup> German jurisprudence goes even further: in the landmark *Mephisto* case, the Federal Constitutional Court also recognised a postmortales *Persönlichkeitsrecht*, thereby ensuring that dignity and reputation remain important legal rights even when weighed against freedom of expression.<sup>53</sup>

These examples show a robust national commitment to posthumous protection but also expose a lack of an equivalent EU-level mechanism. Common-law jurisdictions, by contrast, outright reject posthumous reputation and hold that personality rights extinguish at death. Under UK law, as demonstrated in the Defamation Act 2013<sup>54</sup>, and in Common-Law jurisdictions, by contrast, reject the very idea of posthumous personality rights, holding that defamation, privacy, and reputation claims extinguish upon death. Under UK law, as clarified in *In re Kennedy* 2009UKHL 38,<sup>55</sup> where the House of Lords reaffirmed that Article 8 ECHR does not extend to the reputation or privacy of a deceased person, no action can be brought to protect the dignity or reputation of the dead. Thus, unlike many civil law systems, the UK provides no posthumous legal protection for reputation. This structural schism between civil and common law represents the key structural obstacle to achieving a harmonised approach at the EU level.

In post-Soviet states, the regulation of the treatment of deceased persons belongs mainly to the sphere of criminal procedure, not to an autonomous regime of "post-mortem dignity".<sup>56</sup>

51 George P Smith, "Dignity in Living and in Dying": The Henry H H Remak Memorial Lecture' (2018) 25(1) *Indiana Journal of Global Legal Studies* 413.

52 Thierry Vansweevelt and Lana Bubalo, 'Post-mortal Protection of the Right to Reputation: A Comparative View' (2019) 10 *Journal of European Tort Law* 1. doi:10.1515/jetl-2019-0101.

53 *Mephisto Case* BVerfGE 30, 173 [1971] Federal Constitutional Court (First Division) <<https://www.quimbee.com/cases/mephisto-case>> accessed 14 March 2025.

54 Defamation Act 2013 (UK), Explanatory Notes <<https://www.legislation.gov.uk/ukpga/2013/26/notes/division/5?view=plain>> accessed 14 March 2025.

55 *R v Kennedy* (No 2) [2007] UKHL 38 <<https://publications.parliament.uk/pa/ld200607/ldjudgmt/jd071017/kenny-1.htm>> accessed 14 March 2025.

56 Jairo Enrique Lucero Pantoja, 'El juez multinivel y la transversalidad de garantías: Un acercamiento a los escenarios fácticos en América y Europa' (2021) 20(41) *Opinión Jurídica* 71. doi:10.22395/ojum.v20n41a2.

Ukraine, the clearest normative model, contains detailed provisions in its Code of Criminal Procedure on exhumation, examination of the corpse, identification of persons, and handling of biological evidence. Exhumation can be ordered only by order of the prosecutor or by the conclusion of the criminal investigation body, and the operations must be carried out by a certified specialist, with complete forensic documentation. As a result, the treatment of human remains is predictable and highly formalised, as it is the measure authorised by the criminal investigation bodies.<sup>57</sup>

Moldova, on the other hand, does not have equally clear procedural norms: national legislation responds to general terms regarding the examination of the corpse, without establishing explicit procedures for exhumation, authorisation criteria, documentation standards or institutional institutions. This lack of detail creates practical uncertainty, leaving forensic work dependent on divergent interpretations by police and prosecutors.<sup>58</sup>

In Lithuania, legislation adopted after 1990 reflects the role of historical memory in the treatment of human remains. The contemporary cultural heritage regime combines archaeological norms with criminal requirements, establishing clear procedures for the discovery, investigation and protection of graves from the period of modern conflicts. The Lithuanian system thus recognises an interdependence between criminal investigation, heritage protection and respect for collective memory.<sup>59</sup> These differences reflect deep historical and institutional legacies that underscore the difficulty of creating a unified European framework.

Such divergences are not incidental but stem from deeper structural, historical and cultural determinants. Civil law systems, such as France, Germany, or Lithuania, tend to theorise personal rights as innate and continuous, a principle derived from constitutional declarations regarding human dignity and codified private law protections. In contrast, common law jurisdictions generally define reputation to be strictly individual and life-related, guided by the adversarial model and the principle that torts do not survive the person. Post-Soviet places like Ukraine and Moldova remain shaped by decades of procedural formalism and the shadow of state-controlled checks, which makes their emphasis on exhumation a matter of criminal procedure, rather than a rights-based inquiry, all the more revealing. Religious traditions are important: Orthodox, Catholic, and Islamic funerary practices still form national rules concerning exhumation, the disposal of the remains, and the conduct of commemorative ceremonies. Finally, the EU's limited competence (Article 167 TFEU)<sup>60</sup> underpins these conflicts, with coherence largely relying on soft-law instruments rather than hard law. In combination, these matters explain why European states provide varying and, sometimes, incompatible models of post-mortem protection.

57 Criminal Procedure Code of Ukraine No 4651-VI of 13 April 2012 (amended 1 August 2025) art 239 <<https://zakon.rada.gov.ua/laws/show/4651-17#top>> accessed 22 September 2025.

58 Ostavciuc and Rusnac (n 49).

59 Petrauskas, Muradian and Kurilienė (n 50).

60 Treaty on the Functioning of the European Union (TFEU) (Consolidated version) [2012] OJ C 326/47, art 167.

Digitalisation has further widened these disparities. Online profiles, biometric identifiers, and platform-stored data persist after death, raising concerns about a “post-mortem privacy” that current European law does not adequately address. GDPR explicitly excludes deceased persons from its scope (Recital 27)<sup>61</sup> while simultaneously allowing Member States to balance data protection with freedom of expression through dedicated derogations (Article 85 GDPR).<sup>62</sup> This dual structure leaves significant regulatory gaps in the protection of post-mortem digital identities.

Highlighted instances, such as *In re Ellsworth*,<sup>63</sup> demonstrate how service providers could deny families access to family reports of deceased relatives, placing the commercial provisions of the contract before personal dignity or family interests.<sup>64</sup> Researchers contend that these challenges require a new mode of regulation, comparing it to the end-of-life instrument, such as living wills, which combine technical, contractual, and moral features to ensure dignity.<sup>65</sup>

Despite increasing awareness of these challenges, competence within the EU remains limited. And yet, under Article 167 TFEU, any policy regarding cultural identity, burial practices, and memorialization is effectively subject to state jurisdiction. This is because hard-law harmonisation is infeasible, and EU action is more likely to be pursued through soft-law instruments: judicial cooperation, ethical guidelines, and interpretative principles based on ECHR case law. Philosophical and legal scholarship is increasingly looking askance at the notion that dignity ends at death. Notions such as “reputational afterlives” or “novel personae” describe how a person’s identity and reputation continue to be reconstructed and have effects after death.<sup>66</sup> In the absence of binding harmonisation, these discourses reinforce the normative call for clear and consistent standards.

#### 4.4. Digital Inheritance and Post-mortem Image Rights in the EU

Today’s digital platforms and social media networks are among the most widely used tools in modern armed conflicts, increasing civilian resilience and influencing military strategies in various ways.

Microsoft, Amazon Web Services (AWS), and Starlink provide essential infrastructure, such as cloud storage, artificial intelligence, and machine learning, enabling nations to conduct

61 Regulation (EU) 2016/679 (n 12) art 17, recital 27.

62 *ibid*, art 85 (“Processing and freedom of expression and information”).

63 *Estate of Ellsworth* (n 16).

64 Nora Hertz, ‘The Right to Freedom of Thought in German’ in Roger Shiner and Patrick O’Callaghan (eds), *The Cambridge Handbook of the Right to Freedom of Thought* (CUP 2025) 112. doi:10.1017/9781009539616.013.

65 Theodore Raymond Leblang, ‘Death with Dignity: A Tripartite Legal Response’ (1978) 2(1-2) *Death Education* 173. doi:10.1080/07481187808253305.

66 Céline Romainville, ‘The Multidimensionality of Cultural Policies Tested by EU Law’ in Céline Romainville (ed), *European Law and Cultural Policies = Droit Européen et Politiques Culturelles* (Europe of Cultures vol 12, Peter Lang 2015) 19.



intelligence operations and deploy digital weapons. Starlink's satellite internet services were essential for communication during the conflict in Ukraine and sparked protests against corporate power when they were disrupted, even briefly.<sup>67</sup>

Social media has become a strong tool for propaganda and disinformation. The identities and images of the deceased, whether we are talking about combatants or other vulnerable groups among civilians, are used to manipulate public opinion.

Unfortunately, the use of the identities of those who have died goes beyond photographs and includes personal details. Different names, fabricated information, or half-truths about the deceased have been shared on messaging apps such as Telegram and VK, which operate in an almost entirely uncensored grey area.

These practices raise legal and ethical concerns about posthumous rights to privacy and dignity. Although international legal frameworks, such as the UN Guiding Principles on Business and Human Rights, emphasise the obligation of digital platforms to mitigate misuse, implementation often remains inadequate.<sup>68</sup>

In that context, the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>69</sup> set forth obligations for technology companies to act in ways that do not harm people's lives, including users of their personal data and human images (including those of deceased persons). Principle 11 sets out that business has an independent duty to respect human rights, and extends to avoiding practices that degrade the dignity of the dead or expose families to secondary victimisation. Principles 13 and 17 highlight the responsibility of digital platforms to prevent, mitigate and address the human-rights impacts caused by services, such as uploading violent images to their feed, misuse of biometric data or manipulated content involving deceased persons. Principle 23 also mandates that enterprises operating in conflict-affected environments be subject to greater due diligence, and this is particularly the case in the context of the Russia-Ukraine conflict, where content involving the dead is often disseminated for propaganda or intimidation. Taken together, this set of principles provides an authoritative background and normative framework for a corporate responsibility perspective on post-mortem dignity preservation in the digital landscape.

The EU General Data Protection Regulation (GDPR) and its indirect approach to the misuse of personal data for deceased individuals remain open to interpretation.

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67 Guarascio, Coveri and Cozza (n 19).

68 Buitelaar (n 14).

69 UNHRC, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN 2011) principles 11, 13, 17, 23.

## 4.5. Post-mortem Rights in the Context of Digital Assets

Post-mortem rights refer to legal protection and rights that extend to a deceased person, protecting aspects of their identity, reputation and personal data after death. These rights cover various areas, including dignity, privacy and the right to control the commercial use of one's own image or likeness, often referred to as the right of publicity.<sup>70</sup>

The “right to be forgotten” is a central component of EU data protection law and is codified in Article 17 of the General Data Protection Regulation (GDPR). It allows individuals to request the deletion of their personal data when it is no longer necessary, when consent has been withdrawn, or when data has been processed unlawfully. Although the GDPR excludes deceased persons from its scope (Recital 27), the logic of Article 17 remains relevant for post-mortem digital legacies: it establishes a normative expectation that personal data should not persist indefinitely without justification. Several Member States, such as France and Spain, have introduced posthumous data-management rights through national legislation, allowing individuals to set instructions for their data after death or enabling relatives to request access to or erasure of their data under specific conditions.<sup>71</sup>

Informed consent, another fundamental principle of European data protection law, obliges that persons must know and willingly consent to how their personal data can be collected, used, or shared. Under the GDPR (Articles 4 and 7), consent must be specific, freely given and based on clear information. However, informed consent cannot be obtained after death, which raises ethical problems when digital platforms persist in collecting, analysing, or exploiting the data of deceased persons. This limitation is especially severe when the personal images, biometric identifiers, or behavioural data of the deceased are reused in algorithmic training, in memorialisation services, or in AI-generated content. The absence of post-mortem consent obligations at the EU level highlights a regulatory gap that exposes digital remains to potential misuse.<sup>72</sup>

Digital assets, such as social media profiles, emails, photo and video recordings, and cloud storage accounts, constitute sensitive personal data held by private actors with different post-mortem management policies.

Social networks, such as Facebook and Email providers, have introduced post-mortem data monitoring features, *for instance*, Facebook's Legacy Contact and Google's Inactive Account

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70 Katie Townsend, 'Raising the Dead: Understanding Post-Mortem Rights of Publicity' (*Documentary*, 2 April 2022) <<https://www.documentary.org/column/raising-dead-understanding-post-mortem-rights-publicity>> accessed 14 March 2025.

71 Regulation (EU) 2016/679 (n 12) art 17, recital 27.

72 *ibid*, arts 4, 6, 7; see also art 9 on special categories of data.

Manager. However, the informational shortcomings of these platforms are evident, with many users unaware of these options.<sup>73</sup>

Yahoo<sup>74</sup> has one of the strictest rules governing post-mortem data among large digital service providers. Its terms of service state explicitly that user accounts are non-transferable and that all rights to the content stored in an account are terminated upon death. This means families are generally unable to access emails, cloud storage, or personal files held by a deceased user, regardless of kinship or inheritance rights. This rigid contractual model has been widely criticised for disregarding both the dignity of the deceased and the legitimate interests of relatives who may require access for emotional, administrative, or legal reasons. Yahoo's policy is an example of how contractual language can effectively override broader ethical considerations about digital legacy and post-mortem privacy.

Facebook takes a more open approach to allowing users to designate a "Legacy Contact" or request that a profile be memorialised.<sup>75</sup> But heirs who lack prior instructions regarding access have faced significant legal challenges, especially in the context of inheritance law. A landmark judgment of the German Federal Court of Justice (Bundesgerichtshof) ruled that heirs have the right to view the complete Facebook account of a deceased minor, applying inheritance law to digital assets in the same way as to physical property.<sup>76</sup> The Court noted that while contractual privacy provisions cannot suppress statutory inheritance rights, it was essential to gain access to the account as the legacy of the deceased and clarification of what occurred in the case of the deceased. This decision has emerged as a focal point for European debates concerning digital inheritance and post-mortem data rights.

The risks of mismanagement are compounded by the increasing use of deceased people's data in artificial intelligence algorithms. These practices could perpetuate the misuse of sensitive information, which calls for transparency in data collection by digital platforms and the provision of safeguards to secure personal data.<sup>77</sup>

The European Union addresses data security through the GDPR, but limiting it almost exclusively to living personalities raises legal and ethical concerns. Some EU Member States, such as France and Spain, have taken steps to extend protection to post-mortem data as well.<sup>78</sup>

73 Lilian Edwards and Edina Harbinja, 'Protecting Post-Mortem Privacy: Reconsidering the Privacy Interests of the Deceased in a Digital World' (2013) 32(1) *Cardozo Arts & Entertainment Law Journal* 101. doi:10.2139/ssrn.2267388.

74 'Yahoo Terms of Service' (*Yahoo!*, 28 October 2025) <<https://legal.yahoo.com/in/en/yahoo/terms/otos/index.html>> accessed 23 November 2025.

75 'How to Add, Change, or Remove your "Legacy Contact" on Facebook' (*Roulet Law Firm PA*, 2025) <<https://www.rouletlaw.com/blog/how-to-add-change-or-remove-your-legacy-contact-on-facebook.cfm>> accessed 23 November 2025.

76 Case III ZR 183/17 (BGH, 12 July 2018) <<https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=86602&pos=0&anz=1>> accessed 23 November 2025.

77 Erdos (n 34).

78 Harbinja (n 13).

Article 85 of the French Data Protection Act (Loi Informatique et Libertés) allows individuals to establish instructions for the management of their personal data after death, including the designation of a person empowered to execute them or the indication of general directives regarding the retention, deletion or transmission of data. These instructions are legally binding on digital service providers, who must ensure their implementation after the account holder's death.<sup>79</sup>

Spain's approach is set out in its national data protection law, Organic Law 3/2018 on the Protection of Personal Data and the Guarantee of Digital Rights. The law grants family members the right to request access to or erasure of the deceased's personal data, provided that this does not violate the deceased's instructions or the privacy of others.<sup>80</sup>

Advocates of post-mortem digital rights argue that such protection is increasingly necessary in the digital age. Individuals should be free to decide how their "digital assets" will be treated after death, including data security, privacy and the right to be forgotten online.

#### 4.5.1. Digital Risks: Data Misuse, Disinformation and Propaganda

The misuse of biometric data, such as facial recognition from photographs of deceased people, poses risks. Advanced technologies can extract and analyse biometric identifiers from digital images, allowing unauthorised use for propaganda or disinformation campaigns.

Biometric data of deceased persons can be exploited in several unethical ways:<sup>81</sup>

- Data used without consent for commercial exploitation or targeted advertising;
- Misappropriation of biometric data for fraud or identity theft;
- Use of biometric profiles of deceased persons for political manipulation.

Post-mortem privacy protections depend primarily on platform terms of service, which may not align with family interests or national succession/data rules.

Those agreements, nearly always unspoken, can reveal sensitive data of dead users, especially young adults who die without a will. Major services like Facebook will continue to "memorialise" profiles, while others, such as Dropbox, require proof of death and legal

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79 Law of the French Republic No 78-17 of 6 January 1978 On Information Technology, Data Files and Civil Liberties 'Relative à l'informatique, aux fichiers et aux libertés' (amended 12 December 2018) art 85 <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000886460>> accessed 25 September 2025.

80 Nuria Martínez Martínez, 'Reflexiones en torno a la protección post mortem de los datos personales y la gestión de la transmisión mortis causa del patrimonio digital tras la aprobación de la LOPDGDD' (2019) 39 *Derecho Privado y Constitución* 169. doi:10.18042/cepc/dpc.35.05.

81 Daria Bulgakova and Valentyna Bulgakova, 'The Recognition of the Deceased Biometric Data under Personal Non-Property Rights in Terms of the General Data Protection Regulation' (2023) 1 *Bulletin of the Penitentiary association of Ukraine* 22. doi:10.34015/2523-4552.2023.1.03.

rights, and Google will need a court order. A lack of uniform legislation further contributes to the divergence in handling and recoverability of digital accounts following death.<sup>82</sup>

The rise of digital identity and post-mortem technologies, including *Delaware trustees' access* to the digital remnants of a deceased person as provided by state law, demonstrates how probate law is evolving. However, trends such as "griefbots"—AI programs designed to recreate dead loved ones from biometric and behavioural data—pose new challenges.<sup>83</sup>

Yet, while some legal systems cautiously recognise digital inheritance, the rapid development of AI-driven tools simultaneously exposes post-mortem data to manipulation and misuse, blurring the line between commemoration and exploitation.

Altered visual images or invented biometrics could be employed in disinformation or discreditation campaigns to manipulate public opinion or provoke a fight. Such abuse exploits the lack of regulation in spaces like Telegram or other similar platforms, and it is a disrespect to the deceased.

The Vietnam War is a historical example where the power of death representations clearly influenced public opinion. Photographs like those from the My Lai massacre became potent icons, and they were typically accompanied by specific stories as campaign fodder to confront government policy choices and persuade opposition.<sup>84</sup> Graphic images of the massacre sparked protests on a large scale in the U.S., including the 1969 Moratorium March to end the Vietnam War, which saw crowds estimated as high as hundreds of thousands descending on Washington, DC.<sup>85</sup>

Furthermore, photo/video recordings of the My Lai massacre generated military trials, including the court-martial of Lieutenant William Calley, who was found guilty and convicted for his role in the killings, although his sentence was later reduced.<sup>86</sup>

In *Der Massenwahn*, Baschwitz examines the World War I propaganda surrounding the so-called German Corpse Factory, a set of stories aimed at dehumanising enemies and mobilising public sentiment through shocking but false information, and highlights the

82 Natasha Chu, 'Protecting Privacy after Death' (2015) 13(2) *Northwestern Journal of Technology and Intellectual Property* 255.

83 Frédéric Bruneault, Andréane Sabourin Laflamme and Bart FW Wernaart, 'The Privacy of the Dead' in Bart Wernaart (ed), *Applied Human Rights* (Wageningen Academic 2023) 185. doi:10.3920/978-90-8686-943-5\_12.

84 Tal Morse, 'Shooting the Dead: Images of Death, Inclusion and Exclusion in the Israeli Press' in Michele Aaron (ed), *Envisaging Death: Visual Culture and Dying* (Cambridge Scholars Publishing 2013) 140.

85 David Isaacs, 'Power of Visual Images' (2016) 52(9) *Journal of Paediatrics and Child Health* 859. doi:10.1111/jpc.13330.

86 Marcel Berni, 'Excessive Violence in a War Without Fronts: Explaining Atrocities in South Vietnam (1965-1973)' in Deborah Mayersen (ed), *Genocide and Mass Violence in Asia* (De Gruyter 2019) 117. doi:10.1515/9783110659054-007.

psychological appeal of such propaganda, rooted in the need to see one's own group as noble and the enemy as evil.<sup>87</sup>

These tactics persist in modern digital contexts, where visual media of deceased people are manipulated to spread misinformation, inflame emotions and deepen social divisions.

#### 4.6. Post-mortem Justice in Contexts of Crisis: The Impact of European and International Public Law on Managing Mass Graves<sup>88</sup>

Mass graves are a recurrent feature of armed conflict, atrocity, pandemics, and disasters with documented legal and ethical implications. Such burials raise difficult legal, moral, and human dignity issues with far-reaching implications for the management responsible for them and the applicable law.

All these concerns should be taken up with a sophisticated understanding of the legal, cultural, and ethical ramifications associated with finding, exhuming, and managing mass graves.

In fact, mass grave management is an issue in several modern circumstances, including war crime investigations, humanitarian responses, and natural disasters. The management of these sites is a practical problem, but also an issue of worth in the larger social sphere. States are forced to balance the respect and dignity of the deceased with evidence related to judicial proceedings.<sup>89</sup>

##### 4.6.1. Historical Context

Mass burial has been used throughout time as a practical means of public health rather than as a matter of dignity. From the Peloponnesian War to the Black Death, there were large-scale battles and mass burials; corpses were often buried in pits without any form of ceremony or markers.<sup>90</sup>

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87 Jaap van Ginneken, 'First Book: On Mass Propaganda and Enemy Images' in Jaap van Ginneken, *Kurt Baschwitz: A Pioneer of Communication Studies and Social Psychology* (Routledge 2018) 93. [https://doi.org/10.5117/9789462986046\\_CH04](https://doi.org/10.5117/9789462986046_CH04).

88 Ana Morari (Bayraktar) and Andreea-Nicoleta Dragomir, 'Preserving Human Dignity: The Impact of European and International Public Law on Managing Mass Graves' (International Scientific Research Congress: Congress Book, Istanbul, 20-21 December 2024) 65.

89 Kirsty Squires, David Errickson and Nicholas Márquez-Grant (eds), *Ethical Approaches to Human Remains: A Global Challenge in Bioarchaeology and Forensic Anthropology* (Springer 2019). doi:10.1007/978-3-030-32926-6.

90 Monica H Green, 'Editor's Introduction to Pandemic Disease in the Medieval World: Rethinking the Black Death' (2014) 1(1) *The Medieval Globe* 3 <<https://scholarworks.wmich.edu/tmg/vol1/iss1/3>> accessed 24 August 2025.

These actions stood in contrast to international humanitarian law developments, especially post-Nuremberg (1945–46), that prosecuted mass atrocity crimes and established principles of accountability, such as refuting the “they were just following orders” defence. The legal precedents that emerged formed the basis of the Geneva Conventions, which most of the world’s nations signed and which set forth what we owe to war’s dead and missing: an obligation to identify them, preserve evidence about who they were and how they died, and ensure their interment with dignity.<sup>91</sup>

Mass graves are still very relevant in modern Europe. In the wake of the conflicts in former Yugoslavia, Bosnia and Herzegovina’s Missing Persons Institute has recorded almost 25,000 exhumations from over 1,600 mass graves between 1996 and 2020; findings are expected to continue up until at least 2023 in towns such as Prijedor, Srebrenica, and Foča.<sup>92</sup> The work, backed by international collaboration, uses state-of-the-art forensic techniques to bring answers to families and preserve their right to the truth.

Mass graves as proof of atrocity have entered the collective memory again with the war in Ukraine. Hundreds of civilians were discovered in the town of Bucha in April 2022, many with signs of execution and torture, while more than 440 bodies were found at Izium, Kharkiv oblast, in September 2022. Ukrainian and foreign forensic teams are documenting these sites using DNA tests and geospatial imagery, not just to identify victims but also to build a case for potential prosecutions before international courts.

These incidents illustrate the evidentiary and humanitarian roles of exhumations in accountability processes.

#### 4.6.2. Technological Advancements and Cultural Sensitivities

Management and conservation of mass graves, therefore, need to achieve a balance between treating the dignity of the dead on one hand and the pursuit of justice/cultural considerations on the other. Advances in technology and changes in forensics have greatly improved the possibility of investigating mass graves and identifying individuals. These efforts will have to be considered in the light of a deep understanding of the culture and religious beliefs of the related communities, lest more suffering is imposed on them, and to ensure that their dignity after death is preserved.

Respecting the dignity of the deceased is essential not only for honouring cultural and religious customs and providing families with emotional closure, but also for

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91 IM Lobo de Souza, ‘Nuremberg’s Enduring Legacy to International Justice’ (2022) 13(2) *Journal of International Humanitarian Legal Studies* 222. doi:10.1163/18781527-bja10054.

92 ‘BIRN Publishes New Mass Graves Data from Bosnian War’ (*Balkan Investigative Reporting Network*, 4 May 2023) <<https://balkaninsight.com/2023/05/04/birn-publishes-new-mass-graves-data-from-bosnian-war>> accessed 24 August 2025.



safeguarding public health, enabling legal and forensic processes, and supporting societal justice and healing.

Municipal cemetery systems in countries, such as the UK, are reasonably transparent and accountable to the public. Burial policies, taxation, and maintenance ultimately lie at the discretion of local councils, to whom they are responsible through the ratepayers. Comparable democratising processes may not be present where the normal provision is through Church-controlled cemeteries, which could create inequalities in both access and decision-making.<sup>93</sup>

It remains challenging to include ethnic and religious diversity in funeral practices globally. The Swiss decisions at the cantonal level regarding sites for Muslim burials are localised strategies that attempt to balance national secular imperatives and community needs, exemplifying the crucial role of inclusive governance in cemetery systems.<sup>94</sup>

In the context of mass burials, effective cemetery management techniques would provide valuable lessons for balancing justice and human dignity. Even in instances of mass graves, the systems need to be in a place that can pay respect to those buried and meet societal expectations through good governance with transparency, cultural sensitivity, and democratic accountability.

In the context of mass grave identification, it can be very challenging to refer to burial customs and respect for human dignity when attempting to reach an almost impossible "compromise" among many cultures, religions, and points of view. The employment of cutting-edge technologies in the identification and discovery of remains has alleviated these issues, but some people still believe that these techniques infringe on the right to the "rest of the soul."

For instance, the exhumation of mass graves in remote indigenous villages occasionally conflicted with Mayan beliefs concerning upsetting the dead when they were discovered in the wake of the Guatemalan civil war.<sup>95</sup> Before exhumations could take place, customary rites had to be performed to placate spirits and honour local traditions. The Maori people of New Zealand view graves as sacred, or "tapu" (sacred and protected). There has been resistance to scientific attempts to exhume the remains for research, including DNA analysis.<sup>96</sup>

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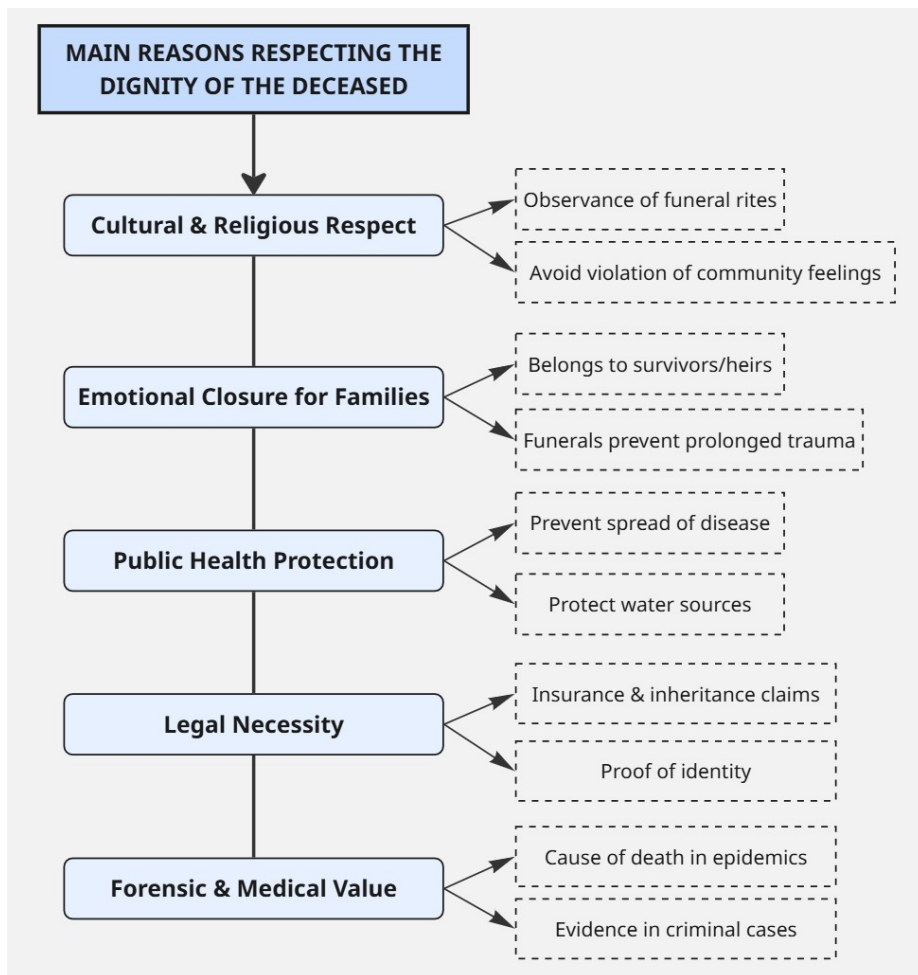
93 Julie Rugg, 'Social Justice and Cemetery Systems' (2020) 46(4) *Death Studies* 861. doi:10.1080/07481187.2020.1776791.

94 Khadija Kadrouch Outmany, 'Religion at the Cemetery: Islamic Burials in the Netherlands and Belgium' (2016) 10(1) *Contemporary Islam* 87. doi:10.1007/s11562-015-0341-3.

95 Bambury Brent, 'Investigators Work to Identify Victims of Guatemala's Civil War, 21 Years After It Ended' (*CBC Radio*, 15 December 2017) <<https://www.cbc.ca/radio/day6/investigators-work-to-identify-victims-of-guatemala-s-civil-war-21-years-after-it-ended-1.4444431>> accessed 25 September 2025.

96 Beatrice Hudson, 'Variation and Process: The History, Current Practice and Future Potential of Mortuary Archaeology in Aotearoa New Zealand' (2020) 129(2) *Journal of the Polynesian Society* 125.

However, the performance of advanced technologies in the process of safeguarding and uncovering mass graves must not be overlooked.



*Figure 2. Main reasons for respecting the dignity of the deceased<sup>97</sup>*

#### 4.6.3 Forensic technologies in mass grave investigations

The application of forensic tools, including DNA testing, increases the ability to identify victims and ensure accountability. However, these approaches raise important ethical issues regarding confidentiality and consent, as genetic information about family members is particularly sensitive and should be protected from misuse. Meanwhile, cultural and religious

<sup>97</sup> Figure 2 is the authors' own elaboration.

customs related to burial will discourage intrusive operations, such as DNA sampling, on grounds of indignity to the deceased, requiring a respectful and open approach.<sup>98</sup>

Ethical dilemmas arise when there is a kinship mismatch. For example, identification becomes more complex and often requires additional DNA samples when it is ascertained that a claimed family member is not biologically related. This places investigators in a challenging position where they must decide whether to reveal private information or save families from suffering.<sup>99</sup>

Informed consent is critical in solving this problem. Families should be informed about possible IFs and their consequences from the very start so that they can decide whether to participate. But equity does not come with consent alone. Policies must ensure fair access to the benefits of identification, such as justice and closure, and minimise risks by improving DNA techniques.

With the assistance of the Croatian government, which provided access to state-of-the-art technologies and DNA analysis, forensic investigations at Ovčara identified 184 victims.<sup>100</sup> In contrast, identifications at Srebrenica were complicated by scattered and altered graves; as of 2003, only 700 of the 7,500 deaths had been identified. The ICTY's<sup>101</sup> decisions to focus on proving patterns of genocide rather than individual identifications frustrated survivors, who again saw a conflict between legal aims and family needs.<sup>102</sup>

The management of mass graves is successful when governments, forensic practitioners and families of the deceased work closely together. Such cooperation will not only bring accountability and transparency to the management of systemic violence but will also support human dignity and aid in the healing process of affected communities.

DNA testing continues to be the primary method of identification and a tool for attributing responsibility for mass graves. However, it is increasingly being replaced by

98 Luciana Caenazzo, Pamela Tozzo and Daniele Rodriguez, 'Ethical Issues in DNA Identification of Human Biological Material from Mass Disasters' (2013) 28(4) *Prehospital and Disaster Medicine* 393. doi:10.1017/S1049023X1300040X.

99 Lisa S Parker, Alex John London and Jay D Aronson, 'Incidental Findings in the Use of DNA to Identify Human Remains: An Ethical Assessment' (2013) 7(2) *Forensic Science International: Genetics* 221. doi:10.1016/j.fsigen.2012.10.002.

100 Helena Ekštajn, Ivana Kružić and Željana Bašić, 'Forensic Investigation of a Mass Grave at Ovčara, Near Vukovar, of Victims Killed by the Serbian Army in 1991' (2021) 2 *St Open* 1. doi:10.48188/so.2.3.

101 International Criminal Tribunal for the former Yugoslavia. It operated from 1993 to 2017, established by the UN Security Council to try war crimes, crimes against humanity, and genocide committed in the territory of the former Yugoslavia. The implication is that the tribunal focused on proving patterns of genocide rather than on identifying individual victims, which created tensions with the needs of families who wanted recognition and identification of missing loved ones.

102 Kweku Vanderpuye and Christopher Mitchell, 'Lessons Learned from the Use of DNA Evidence in Srebrenica-related Trials at the ICTY' in Carsten Stahn and others (eds), *Legacies of the International Criminal Tribunal for the Former Yugoslavia: A Multidisciplinary Approach* (OUP 2020) 209. doi:10.1093/oso/9780198862956.003.0013.

modern tools, such as satellite imagery and remote sensing. These techniques allow for the search for burial sites and the recording of violations, even in locations that would otherwise be inaccessible or in active conflict.

In this regard, remote sensing applications, such as hyperspectral imaging, enable researchers to identify negative changes in soil and vegetation that may result from unmarked mass graves. By detecting faint spectral fingerprints associated with disturbed soil or human remains, these technologies complement forensic investigations, providing critical assistance in the search for truth and justice. For example, experimental studies have shown discrepancies in electromagnetic radiation reflected at grave sites compared to undisrupted landscapes. These technologies provide objective evidence and may be used in situations where denying the presence of mass graves is an issue, which has happened in conflicts in Guatemala, Iraq, and Rwanda.<sup>103</sup>

This has very serious implications for people's right to privacy when satellite images are used to monitor private areas in conflict zones. For instance, monitoring civilian shelters, places of worship, or refugee camps without permission might violate the autonomy and dignity of the individuals being watched.

This issue has been addressed by the International Criminal Court, highlighting the need for collaboration between local authorities and forces investigating war crimes and their consequences. Practical challenges, however, include the expensive and scarce availability of adequate high-resolution photographs, often collected by for-profit companies that have limited financial incentive to collect data in atrocity-prone areas; similarly, the ICC relies heavily on external analysts such as Human Rights Watch and Amnesty International, which have limited resources and may have objectives that are inconsistent with the needs of legal evidence. Remote-sensing techniques are far from professionalised and standardised, and judges often lack the technical knowledge to evaluate geospatial evidence.<sup>104</sup>

These challenges involve taking measures to ensure the admissibility, reliability, and probative value of satellite evidence: developing standard forensic practices, maintaining a chain of custody, and educating the legal expert on how to understand and evaluate geospatial analysis. If satellite images are to be used appropriately in courts, judges must be knowledgeable about their technological underpinning.

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103 Margaret Kalacska and others, 'The Application of Remote Sensing for Detecting Mass Graves: An Experimental Animal Case Study from Costa Rica' (2009) 54(1) *Journal of Forensic Sciences* 159. doi:10.1111/j.1556-4029.2008.00938.x.

104 Patrick Kroker, 'Satellite Imagery as Evidence for International Crimes' (*Coalition for the International Criminal Court*, 23 April 2015) <<https://www.coalitionfortheicc.org/news/20150423/satellite-imagery-evidence-international-crimes>> accessed 24 August 2025.

#### 4.6.4 Comparative Table of Post-Mortem Rights in Selected Jurisdictions

To facilitate cross-jurisdictional comparison and ensure analytical transparency, the following table summarises key elements of post-mortem protection across the jurisdictions examined: scope and nature of post-mortem rights, duration of protection, standing to bring claims, available remedies and relevant legal practices.

Table 1 summarises the substantive scope of post-mortem protection across the selected jurisdictions, including recognised rights, duration of protection and relevant national practices. The table shows a deeply uneven European landscape in terms of the recognition and protection of post-mortem rights. Five major conclusions emerge from the comparative analysis:

- i. Latin and Germanic models offer the strongest post-mortem protection. France, Germany, and Lithuania explicitly recognise dignity, image, name, or personality rights after death, thereby creating legal continuity between the rights of the living person and the protection of memory after death.
- ii. Post-Soviet states retain an orientation towards the protection of reputation and the role of the family. In Moldova (and similarly in Ukraine), post-mortem rights are based on “honour, dignity and reputation,” reflecting the Eastern European legal tradition and the strong role of the family as a procedural holder.
- iii. Common law remains the most restrictive: the United Kingdom does not recognise any post-death personality rights, relying on indirect protections through relatives. This produces the largest normative gap in Europe regarding post-mortem dignity.
- iv. The duration of protection varies significantly. From unlimited protection in Lithuania to 10 years for honour in Germany, the differences demonstrate the lack of a common European vision on post-mortem memory and identity.
- v. Digital practices are the most divergent: France is the only state in the table that explicitly regulates “digital post-mortem directives” (Art. 85 LIL), whereas other states lack equivalent mechanisms.

These findings highlight the need for greater harmonisation across the EU in governing digital identity after death.

**Table 1. Comparative table. Substantive post-mortem rights and duration of protection**

Jurisdiction	Recognised post-mortem rights	Duration of protection	Relevant practices/notes
France	Memory, dignity, name, image <sup>105</sup>	Not fixed	Digital directives allowed under Art. 85 LIL <sup>106</sup>
Germany	General personality right (post-mortem) <sup>107</sup>	~10 years (honour), memory longer	Strong jurisprudence on image rights
Lithuania	Dignity, honour, image, privacy <sup>108</sup>	No limit	The Civil Code is explicit on the post-mortem image
Slovenia	Dignity, privacy (constitutional) <sup>109</sup>	Not fixed	Constitutional protection applies to the deceased
United Kingdom	No post-mortem personality rights <sup>110</sup>	—	Only indirect protections via relatives
Moldova	Honour, dignity, reputation <sup>111</sup>	Not fixed	Post-Soviet model, strong family rights

As Figure 3 shows, procedural safeguards for post-mortem rights vary considerably from country to country, particularly regarding who has standing and what remedies are available. Applicable under civil law, jurisdictions such as France, Germany, Lithuania and Moldova have the broadest standing, allowing, in most cases, spouses, children, parents and heirs to act in defence of the dignity, honour, or image of the deceased. These systems also provide for a range of remedies—such as injunctions, removal of illegal content, corrective measures and damages—which reflect a substantial recognition of

105 Scarre (n 2); Law of the French Republic No 78-17 (n 79) art 85.

106 Law of the French Republic No 78-17 (n 79) art 85.

107 *Mephisto* (n 53).

108 Petrauskas, Muradian and Kurilienė (n 50).

109 ZVOP-1 (n 33); Constitution of the Republic of Slovenia, art 34 (right to dignity) and art 38 (right to data protection).

110 Defamation Act 2013 (UK) (n 54); *Von Hannover v Germany* (n 42) - relevanță indirectă pentru absența protecției post-mortem în common law.

111 Ostavciuc and Rusnac (n 49).

post-mortem personal interests. However, Slovenia associates standing with either family ties or a ‘legitimate interest’, a broader principle that, in effect, adds flexibility between definitions. The United Kingdom is an exception in this regard: since post-mortem personal rights are not recognised, active standing arises only when living relatives can demonstrate that their own rights have been infringed, so that the civil remedies available are much less extensive and their channels even more restricted. Overall, the table suggests that procedural protection corresponds to substantive recognition: where post-mortem rights are recognised, remedies are more comprehensive and effective; where they are not, protection is fragmentary and indirect.

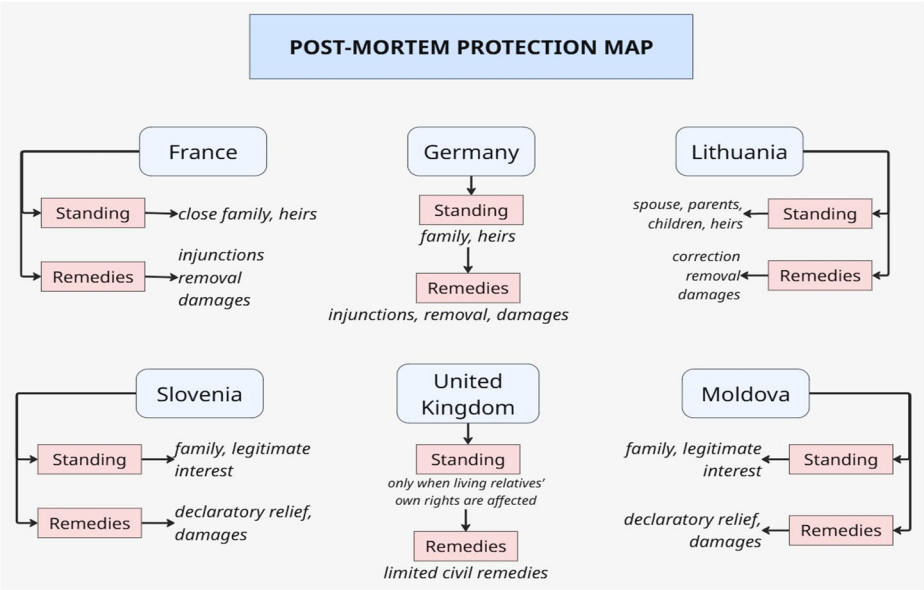


Figure 3. Comparative table. Standing and remedies in post-mortem cases

#### 4.7. Violation of Post-mortem Rights

##### During the Russian-Ukrainian Conflict Through Unsecured Social Media Platforms

The uncommon use of digital platforms in the documentation, distribution, and politicisation of images of the dead serves as a stark reminder of the importance of post-mortem rights in the context of the Russian-Ukrainian war. In contrast to earlier wars, the current conflict has been played out in real time on social media, with soldiers, civilians, journalists, and automated bots all sharing images of dead bodies, battlefields, and devastated communities. The treatment of the deceased has changed from a private matter



of mourning to a public spectacle due to this digital visibility, frequently violating the rights of their families and the dignity of the departed.

Social media sites like VKontakte, Twitter (X), TikTok, and Telegram have become essential tools in contemporary information warfare. In addition to being places for propaganda and narrative control, they are also uncontrolled settings where pictures of the deceased are used as a tool for psychological manipulation, recruitment, or desensitisation.

These platforms usually host unverified graphic content that violates the principles of respect and confidentiality enshrined in international humanitarian law, because there are no strong ethical standards or legally binding international norms governing digital dissemination. The ease with which such content circulates, often without context or consent, raises serious ethical and legal questions regarding the infringement of post-mortem rights in modern conflict areas.

#### 4.7.1. Digital Warfare and the Visibility of the Dead Content Warning:

This section presents the digital circulation of wartime imagery involving the dead

The Russia-Ukraine conflict has made the dead and other victims more visible online than their fellow human beings ever have—both civilians and combatants dead, and the photos and videos of them floating constantly in every corner of the internet - have been huge ones, too. The digital visibility of this exposure—often devoid of context, consent, or moral underpinnings—has prompted scholars to view the phenomenon as a form of digital necropolitics in which bodies are reduced to instruments of propaganda, disinformation, or emotional manipulation. They violate the dignity of the dead and transgress humanitarian norms that mandate the dignified consideration of human remains.<sup>112</sup>

Of all the digital platforms, Telegram has been the leading one as it has relatively few controls and does not censor its uncensored wartime material much. Pro-war audiences are often shown photos of dead soldiers (which may be seen with hostile remarks intended to intimidate or back up propaganda messages) or comments used for partisan reasons. TikTok and Instagram also partake in those trivialization efforts on what is often known as wartime death, where very short videos deploy music, captions or edits to decorate or normalise the images of corpses on the battlefield. Even on more regulated platforms (e.g., Twitter/X or YouTube), wartime images continue to crop up over re-posts, comments, or algorithmic amplification.<sup>113</sup> Academic research, such as that conducted by Oliynyk on the

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112 Anjli Parrin and others, 'The Protection of Dead Persons under International Human Rights Law: Evaluating Gaps and Developing a Principles Framework' (2025) 929 *International Review of the Red Cross* <<https://international-review.icrc.org/articles/the-protection-of-dead-persons-under-ihl-929>> accessed 24 November 2025.

113 For example, see studies on algorithmic amplification during armed conflicts and the role of platforms in the redistribution of violent content, such as: Astuti, Attaymini and Dewi (n 22); *DisinfoChronicle* (n 23).

portrayal of fallen soldiers across earlier phases of conflict, has shown that digital images can serve commemorative roles, namely, framing collective memory and narratives of sacrifice. Journalists or members of the public post on social media framing the fallen in terms of national myths of resistance, mourning and heroism. However, those same photos are also commonly weaponised by hostile parties with derogatory captions or misinformed portrayals of the deceased as criminals, enemies, or objects of derision.<sup>114</sup>

This duality—remembrance versus weaponisation—in which digital platforms can simultaneously venerate and degrade, depending on users' intentions. The impact on families is significant. It is typical for loved ones' deaths to be revealed only after leaked images appear online and not through official confirmation.<sup>115</sup> Such a loss of control over the dissemination of sensitive images undermines the family's capacity to manage commemoration, is intrusive to their privacy and results in significant and serious psychological harm. This absence of clear norms regarding the digital representation of deceased persons generates what can be described as a *digital respect vacuum*—a space in which images of the dead circulate without ethical safeguards, without institutional control, and without a protective framework that reflects post-mortem dignity.

A more extensive regulatory environment, however, has its limitations in grappling with these issues. The principles available in International humanitarian law and ICRC (International Committee of the Red Cross) guidelines for the dignified treatment of the deceased<sup>116</sup> are guidelines, but they do not address how they should be incorporated into platform governance. The EU Digital Services Act (DSA) imposes extensive obligations on online platforms, including notice-and-action mechanisms for removing illegal content (Article 16), systemic risk assessments concerning violent or harmful content (Article 34), and mitigation measures to reduce such risks (Article 35).<sup>117</sup> However, the

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114 ibid

115 See, for example, Human Rights Watch reports on the documentation of war crimes and disappearances of civilians in Ukraine (2022–2024): Human Rights Watch, *World Report 2024: Ukraine* (Human Rights Watch 2024) <<https://www.hrw.org/world-report/2024/country-chapters/ukraine>> accessed 25 September 2025. The Amnesty International reports on civilian casualties and the treatment of prisoners of war in the context of the Russia–Ukraine conflict, see: Amnesty International, *A Deafening Silence: Ukrainians Held Incommunicado, Forcibly Disappeared and Tortured in Russian Captivity* (Amnesty International 2025) <<https://www.amnesty.org/en/latest/news/2025/03/russia-ukraine-ill-treatment-of-ukrainians-in-russian-captivity-amounts-to-war-crimes-and-crimes-against-humanity/>> 25 September 2025. And the analyses of *DisinfoChronicle* (n 23).

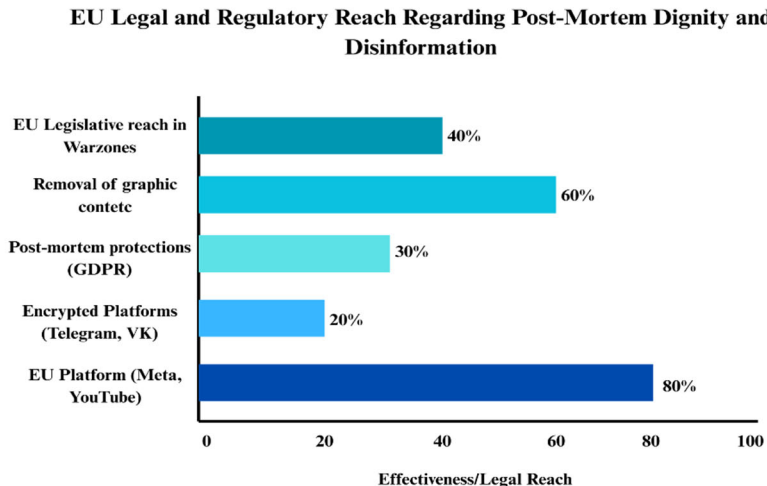
116 ICRC, *Guiding Principles for the Dignified Management of the Dead in Humanitarian Emergencies and to Prevent them Becoming Missing Persons* (ICRC 2021) <<https://www.icrc.org/en/publication/4586-guiding-principles-dignified-management-dead-humanitarian-emergencies-and-prevent>> accessed 25 September 2025.

117 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L 277/1, arts 16, 34, 35.

DSA still falls short in addressing war-related imagery, post-mortem dignity, and the circulation of sensitive material involving deceased persons. In the real world, however, moderation policy loopholes and uneven enforcement of platforms' rules on such content mean that it can be widely spread and leads to desensitisation, which drives propaganda and undermines public trust. Without a legal and ethical framework, the dead are even more vulnerable in digital warfare. Their images circulate quickly, without nuance, in stories that run counter to humanitarian norms and violate basic human rights. This calls for clearer European standards that capture the interplay among digital platforms, armed conflict, and post-mortem dignity.

#### 4.7.2. Response of the European Union to the Violation of Post-mortem Rights Through Unsecured Social Media Platforms

European institutional communication has increasingly addressed the challenges posed by hybrid threats, including the online dissemination of violent war imagery. These institutions have coordinated campaigns to expose disinformation, established dedicated task forces such as the East StratCom Task Force and the EUvsDisinfo initiative, and issued regular public statements condemning both the glorification of war crimes and the digital circulation of graphic images depicting Ukrainian soldiers (see Fig. 3).



**Figure 3. EU legal and regulatory reach regarding post-mortem dignity and disinformation**

Figure 3 illustrates the relative visibility of EU institutional counter-measures across major platforms, based on EUvsDisinfo monitoring reports from 2022–2024. It reflects the degree of institutional response rather than formal legal compliance.

The data underlying Figure 3 were extracted from EUvsDisinfo monitoring reports (2022–2024) and coded according to the relative frequency and visibility of institutional counter-measures across major digital platforms; the percentages represent comparative visibility levels rather than legally binding compliance metrics.

Despite these initiatives, institutional communication struggles to match the speed and emotional impact of content circulating on Telegram, where anonymity, limited moderation and deliberate shock value allow harmful imagery to bypass EU standards.<sup>118</sup>

This challenge is compounded by the absence of a harmonised EU framework addressing post-mortem dignity in digital environments. Although Article 1 of the Charter of Fundamental Rights protects human dignity, its applicability to deceased individuals remains uncertain. The circulation of de-identified images of Ukrainian war dead on pro-Russian Telegram channels highlights a normative gap at the intersection of human rights and digital media regulation.

The European Parliament has supported regulatory instruments such as the Digital Services Act (DSA) and the strengthened 2022 Code of Practice on Disinformation, which require major platforms (Meta, X, YouTube) to remove illegal content, increase algorithmic transparency and cooperate with fact-checkers. However, as noted in Commission implementation reports and in debates within the LIBE and IMCO committees, these obligations have limited effect on decentralised or non-EU platforms such as Telegram.<sup>119</sup>

In practice, this regulatory gap allows conflict-related content involving deceased persons to circulate widely on Telegram, undermining EU efforts to protect human dignity and counter wartime disinformation. While documentation for purposes of accountability continues, the emotional and symbolic exploitation of the dead online is often treated as a media literacy or cybersecurity concern rather than a human rights issue.

This reflects a structural limitation of EU law, which prioritises the protection of living data subjects (e.g., under the GDPR) and lacks equivalent safeguards for post-mortem dignity. Existing ethical frameworks, such as the Bournemouth Protocol on the Protection and Investigation of Mass Graves, provide principles relevant to digital preservation and the public release of imagery. However, meaningful implementation requires enforceable digital rules capable of addressing platforms operating outside the EU's jurisdiction.

These standards align with the United Nations Minnesota Protocol (2016),<sup>120</sup> which establishes minimum international requirements for the investigation of potentially unlawful deaths, including the respectful treatment of the deceased and the proper

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118 Raquel Ruiz-Incertis and Jorge Tuñón-Navarro, 'European Institutional Discourse Concerning the Russian Invasion of Ukraine on the Social Network X' (2024) 5(4) *Journalism and Media* 1646. doi:10.3390/journalmedia5040102.

119 *ibid*

120 OHCHR (n 21).

handling of visual and digital documentation. Incorporating these standards into EU-level soft-law instruments would strengthen coherence between forensic, humanitarian and digital governance norms.

## 5 CONCLUSIONS

The analysis of the subject shows that there are significant differences in legal, digital governance, and national attitudes towards post-mortem dignity across Europe, resulting in a clearly fragmented regulatory and judicial landscape. This illustrates that the value of human dignity under Article 1 of the EU Charter is fundamental; however, its normative and institutional definitions are ambiguous, and its interpretation and consequences after death remain unclear. This ambiguity becomes particularly evident in the digital sphere, where the GDPR's exclusion of deceased persons and various national rules on digital legacy leave the posthumous presence of individuals largely at the mercy of the contractual policies of private platforms. Contemporary conflicts, notably the war in Ukraine, expose the limits of this model: mass graves, the circulation of graphic images and the algorithmic afterlife of the deceased illustrate how easily regulatory gaps can turn into harm affecting families, communities and collective memory.

These findings confirm the central questions guiding this study—whether human dignity can meaningfully be understood as a value that outlives death and whether the European legal order is capable of articulating coherent norms in this regard—questions that current doctrine is not yet equipped to resolve. The continuation of dignity after death is not presented as a formal right, but as a functional principle expressed through the rights of the living, the expectations of families and the symbolic protection of memory. At the same time, the EU regulatory architecture still cannot cope with the growing tensions associated with digitalisation and modern conflicts, thereby exposing a normative vacuum in both concept and practice.

In this context, the article argues that a coherent European approach is both necessary and achievable without changing the distribution of competences between the EU and the Member States. One promising way forward is to strengthen coordination through soft-law instruments, judicial cooperation, and principled guidelines inspired by existing humanitarian and forensic standards, such as the Bournemouth Protocol and the Minnesota Protocol. Clarifying the relationship between dignity and digital presence, including a reconsideration of Recital 27 of the GDPR, would help ensure continuity between the protection enjoyed during life and the respect due to it after death. Similarly, greater convergence in the governance of digital assets and in the ethical standards applied by online platforms would mitigate the risks posed by the unregulated dissemination of post-mortem images in conflict contexts.

Such an approach would not replace national autonomy in funeral practices, exhumation procedures, or cultural rites. Rather, it would provide a minimum common denominator, consistent with European constitutional traditions and the case law of the ECHR, ensuring that post-mortem dignity is not left entirely to domestic contingencies or the discretion of private digital actors.

Through doctrinal investigation, comparative national analyses and the concrete realities highlighted by the war in Ukraine, the article positions “post-mortem justice” as an emerging doctrinal field at the intersection of human rights, forensic practice and digital governance. The analysis demonstrates that issues traditionally treated as marginal, such as exhumation procedures, digital afterlives, and the online representation of the dead, have become central to contemporary human rights protection. This conceptual bridge between established norms and evolving technological and forensic challenges highlights the need for a more systematic and coordinated European response.

A fully coherent EU framework would ultimately require clearer obligations for digital platforms, particularly in conflict settings, to prevent the misuse of biometric data and the circulation of violent images of deceased persons, thereby ensuring that dignity remains a protected value beyond the boundaries of biological life.

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## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

### ПРАВОСУДДЯ ПІСЛЯ СМЕРТІ: ЛЮДСЬКА ГІДНІСТЬ ТА ПРАВОВИЙ ЗАХИСТ В ЄВРОПЕЙСЬКОМУ СОЮЗІ

**Драгомір Андреа-Ніколета\*, Весмаш Даяна-Маура та Ана Морарі (Байрактар)**

#### АНОТАЦІЯ

**Вступ.** Поводження з тілами після смерті стає дедалі суперечливішою темою в європейському правовому дискурсі, зокрема на перетині питань людської гідності, захисту даних та судово-медичної експертизи. Хоча людська гідність закріплена як один із фундаментальних принципів, що підлягають захисту згідно з законодавством ЄС, дослідження такого принципу та його поширення на інтереси після смерті є неоднорідним та має розбіжності у різних державах-членах. У статті (i) оцінюється, чи може принцип людської гідності слугувати підставою для судового захисту після смерті особи; та (ii) досліджується, як ЄС може узгодити очікування, які зростають, щодо посмертних прав у контексті цифрової війни, великої кількості даних та гібридних конфліктів. Щоб проілюструвати ці проблеми на практиці, аналіз розглядає Україну як контекстуальний випадок, де збройний конфлікт між Росією та Україною спричинив великі людські жертви, цифрове поширення зображень померлих осіб та обмеження наявних європейських механізмів захисту.

**Методи.** У статті представлено порівняльно-правовий аналіз законодавства ЄС, законодавства окремих держав-членів та обмежень міжнародних норм у сфері прав людини з наголосом на юрисдикції Європейського суду з прав людини. Автори також спираються на міждисциплінарні дослідження, що об'єднують правову доктрину, біоетику та вивчення цифрового управління. Методологія переважно доктринальна та аналітична, підкріплена справами, що ілюструють різні національні підходи до захисту гідності та прав після смерті.

**Результати та висновки.** У статті зазначено, що законодавству ЄС бракує систематизованої бази для захисту гідності після смерті, що дає державам-членам свободу регулювати її фрагментарно та іноді суперечливо. Національні рішення значно

*різняться: від фундаментального захисту особистих прав після смерті зі специфічними засобами правового захисту (Німеччина, Франція) до відсутності будь-яких наявних засобів правового захисту (Сполучене Королівство). Ця безперервна цифрова спадщина в сучасних війнах, що проілюстрована випадком України, де масові поховання та зображення померлих, поширені в Інтернеті, викликали нагальне занепокоєння, вказує на обмеження чинних механізмів, включно з GDPR та Законом про цифрові послуги. Ці тенденції свідчать про те, що ЄС міг би запровадити більш глибоку інтеграцію, впроваджуючи необов'язкові законодавчі та судові інструменти співпраці відповідно до чинних міжнародних стандартів, з метою зменшення виявленого розриву між формальним визнанням людської гідності та її ефективним захистом після смерті.*

**Ключові слова.** Гідність після смерті, право Європейського Союзу, права людини, захист даних, Україна.