



The Living Instrument Principle and the No-Longer Living: Human Rights and Death Investigations under an Evolving ECHR

Alicia Danielsson¹ 

¹ The University of Greater Manchester, Bolton, BL35AB, UK
The Hume Institute for Postgraduate Studies, 1018 Lausanne, Switzerland

CoronialLaw@greatermanchester.ac.uk

Abstract. This article explores the potential influence of the European Convention on Human Rights (ECHR) being interpreted as a “living instrument” in situations involving the no-longer living. It asks if, and in what way, Convention values have the potential to apply meaningfully beyond biological life, and the way this question becomes operational in relation to death-investigation duties, with a particular focus on Article 2 procedural obligations to conduct effective investigations. Using doctrinal analysis of ECtHR jurisprudence, with comparative reference to national approaches, this article maps the ECtHR’s hesitation to interpret deceased individuals as rights-holders whilst illustrating the way post-death interests are considered via the rights of the living and state obligations to protect dignity, ensure accountability and prevent future harms. Philosophical foundations are engaged through the will theory/interest theory debate and dignity-based accounts of posthumous harm, clarifying what is conceptually at stake when “rights” are invoked after death. The article concludes that the living instrument principle is not straightforward in the way it grants rights to the dead, but is able to reanimate certain human rights protection post-death by linking memory, dignity and prevention to the ECHR’s contemporary purpose.

Keywords: Posthumous dignity; Living instrument principle; European Convention on Human Rights (ECHR); Article 2 investigations; Coronial inquests; Prevention of Future Death reports (PFDs); Personality and reputational rights after death

1 Introduction

As established in various judgments, the European Convention on Human Rights (ECHR) is often described as a living instrument [1–4]. This means that its content is interpreted dynamically in light of current day conditions [5][6]. The purpose of the living instrument principle is to ensure that the rights protected within the European Convention on Human Rights are able to evolve at the same time as social norms, thereby ensuring that any new threats to dignity and justice still remain covered by the Convention [1][5][6]. The living instrument principle was first articulated in *Tyrer v United Kingdom* [2], thereby opening the door, legally speaking, to enabling the

© The Author(s) 2026

A. Danielsson et al. (eds.), *Proceeding of The Future of Life - Legal, Scientific, and Geopolitical Challenges (TFOL 2025)*, Advances in Social Science, Education and Humanities Research 1001,
https://doi.org/10.2991/978-2-38476-555-3_6

European Court of Human Rights to ensure protection of rights in response to changing moral, technical and political circumstances [1][5]. However, despite the intent of the living instrument principle being forward-facing, its application to those who no longer live can be described as a form of paradox [7-9]. As such, the question may arise how this principle, and the rights that are protected within the ECHR, which are focused on protecting living agency and personhood, can account for the dignity, treatment, or suffering of those who are no longer living [10-13]. As such, this chapter intends to look more closely at whether the Convention has anything to say about the no longer living.

This research project seeks to critically explore the way the ECHR's living instrument principle has been applied in cases involving the dead, with a particular focus on death investigation, posthumous dignity and procedural accountability contexts. In particular, the examination addresses the way legal systems, particularly through coronial processes and ECtHR jurisprudence, strike a balance between the rights of the living and the dead, while still honouring the legacy of the deceased [12][14]. Although it has been established quite consistently within the jurisprudence of the European Court of Human Rights that the dead are not right holders per se under the Convention, there is a growing body of case law that demonstrates a developing understanding of the links between the way the dead are treated and how this may impact the rights of the living [15][10][16]. This is the point in which this research project finds its starting point, namely the questions that are raised in relation to autonomy, memory, reputation and the symbolic and structural role of human rights law, and how these shape the governance and understanding of death [7][8].

2 Methodology and theoretical framework

As is common practice in legal research, this study mostly utilises a combination of doctrinal legal research, as well as comparative analysis and theoretical jurisprudence, for the purpose of probing the tensions between the human rights framework that is designed to protect the living and the treatment of human dignity posthumously [17][18][19][20]. The heart of this analysis rests on a structured analysis of ECtHR jurisprudence, including detailed analysis of decisions ranging from *Jordan v UK* [21], *Al-Skeini v UK* [22], *Pannullo and Forte v France* [23], *Akpınar and Altun v Turkey* [24], *Cipolletta v Italy* [25], as well as selected other cases [26][27]. The analysis focuses primarily on identifying the way the Court articulates posthumous interests and procedural obligations, particularly in light of developments in this subject matter under Articles 1, 2 and 8 ECHR through the living instrument principle [28-31].

In light of the link between the application of the living instrument principle and the views held within domestic jurisdictions, a comparative lens will also be applied in order to showcase potential shifts within the member states on the subject matter. This comparative undertaking, however, will not be conducted in a horizontal fashion in which national jurisdictions are compared, but rather in a vertical fashion, whereby

potentially different understandings in national law are contrasted with the interpretations and applications of the ECtHR.

3 Theoretical foundations: Is it possible for dead to have rights?

As explained in the introduction of this paper, a key question that contributes to the tension in this subject matter is whether the dead are legitimately able to hold legal rights [32][33][34]. It is thus not surprising that there is considerable doctrinal ambiguity across legal systems in this area [16][33][32]. The question itself is not merely metaphysical, but instead arises from the core concepts of personhood, autonomy, and the justification for human rights [35][36][37]. In order to grasp the limitations of the law in this area and the way it is able to apply to deceased individuals, it is important to provide a more detailed examination of the fundamental jurisprudence that underpins these ideas [38][39][36]. As such, this section seeks to explore some of the most prevalent conceptual foundations of posthumous rights claims, with a particular emphasis on the competing theories of legal rights and the evolving notions of dignity, as well as the implications these have for the way the ECHR is interpreted as a living instrument [40][1].

3.1 Will theory, interest theory, and the problem of the dead

One of the most historically fundamental philosophical legal debates relates to whether individuals can be said to possess rights[39][36][38]. Within this debate, two key competing theories have dominated the debate and shaped the way legal personhood and the legitimacy of rights claims are understood today[38][41][36]. These are the will theory and the interest theory[36][41]. According to the will theory, rights are instruments held by moral agents who are capable both of making their own choices and holding their own responsibilities[39][38][41]. The key premise upon which the ideas of this theory are built is that individuals have the capacity to exercise autonomy, most notably the ability to assert legal entitlements or waive them[39][38][36]. If one applies these foundational concepts of the will theory to the deceased, the answer would be quite clear that as the dead lack consciousness or agency, they would not be able to hold rights, in particular as they could not exercise will or autonomy[42][34]. Any rights relating to the dead, according to this thinking, could merely be symbolic, as they would oppose the logic upon which this theory is built.

The interest theory, in contrast, has been shaped predominantly by scholars such as Raz and MacCormick, and is built primarily on the notion that rights exist for the purpose of protecting significant interests of individuals [36][43][38]. The ability to assert or waive the right is not necessarily required; rather, the right itself is legitimised by its capacity to protect the intrinsic value of interests connected to the individual in question [36][38][44]. The theory was developed on the basis of moral arguments

emphasising the need to protect the interests of individuals who may fall outside the conditions of the will theory, such as infants, the comatose, and, of particular relevance to this research, the dead [38][44][42].

According to Smolensky [32], the ideas of the interest theory could be applied to justify posthumous legal protections, including matters such as bodily integrity, posthumous reputation, or burial wishes [32, 45, 34]. This argument is built on the idea that these legal protections are not merely moral sentiments, but rather manifestations of *de facto* legal rights [33]. In particular, Smolensky notes that “When these interests are protected by legal rules, the dead are granted *de facto* legal rights, even if these rights cannot be vindicated by the deceased themselves.” [32, p. 764].

We mentioned earlier in this paper the ECtHR has avoided adjudicating directly on these questions, however, as will be discussed later in this paper, the reasoning used by the ECtHR in these cases, for instance Pannullo and Forte v France [23] and Hadri Vionnet v Switzerland [46], are good examples of the way posthumous harms have been filtered through the human rights processes relating to the interests of the living, most notably grieving parents and next of kin [33]. As will be discussed later, the interest theory may be better inclined to explain this orientation taken by the ECtHR.

There still remains a limitation to this idea, however. According to the interest theory, the interest is required to persist after death[47]. This still raises the difficult ontological question of whether the deceased can continue to have interests in the first place[47][7][48]. Scholars such as Smolensky, Sperling and Nwabueze argue a potential resolution by acknowledging that the legal personality of the deceased continues to linger, most notably in symbolic or cultural terms[32][34][16]. Moreover, the ability of law to recognise testamentary freedom, reputation rights, as well as bodily integrity after death, can be viewed as evidence that demonstrates that death does not represent a clean break in normative terms. In a way, the posthumous legal subject is constructed relationally in these areas, through the interests of living people, as well as state obligations[34][11][33].

3.2 Dignity, memory, and the moral grammar of rights

Although it’s not a theory in itself, a complimentary approach, or perhaps a more normatively resonant view on the matter, can be found in the concept of human dignity [40][50][51]. Despite a lack of legal definition of dignity, it is often applied as one of the most important moral foundations of human rights systems, including the ECHR [52][53]. In *Akpınar and Altun v Turkey* [24], the European Court of Human Rights addressed the state’s failure to return the bodies of two deceased individuals to their families for burial following a security operation. The applicants alleged violations of Articles 3 and 8, arguing that the authorities’ conduct had caused profound distress and interfered with their ability to mourn in accordance with cultural and religious traditions. The European Court of Human Rights, however, did not find a violation of either submission. The suffering of the relatives of the deceased was acknowledged, but it was held that the circumstances did not meet the necessary threshold of severity

to engage Article 3. It was also determined that there had been insufficient disclosure of interference with family life under Article 8.

For the arguments put forward in this paper, this restrictive stance taken by the Court showcases the limits of the Court's previous willingness to translate moral outrage into some form of legal responsibility in cases that involved the dead, despite recognising posthumous dignity. As such, this case demonstrated yet again how the rigid stance of the European Convention on Human Rights framework, in relation to the application of rights applying solely to living individuals, was maintained.

The significance of this judgment becomes more prominent in light of later developments, such as in the case of *Sabanchiyeva and Others v Russia* [54]. Here, the Court took a different view and found that the refusal to return the bodies of deceased relatives for burial had constituted an infringement of Article 8 ECHR, explaining that this kind of conduct offended the principle of human dignity. The legal subject of this case remained the living relatives of the deceased. However, the reasoning reveals an increasing judicial sensitivity to the moral status of deceased individuals. Although the evolutive shift that becomes apparent here is minor, it nevertheless demonstrates a trend towards dignity being seen as relational and reflective. This is also where the ideas underpinning the living instrument principle are of significance [5][26]. The jurisprudence of the ECtHR is meant to align with the broader cultural and legal traditions of its members [5][26]. If one takes into account the fact that in several European jurisdictions posthumous dignity is treated as a social value, which can be seen in certain legal protections afforded to corpses, such as prohibitions on dissection without consent, laws prohibiting grave desecration, or public indecency, an underlying commitment to protecting interests beyond life can be found [50][55]. To briefly mention an example at this point in the paper, one can see that in France the state recognises the posthumous right to marry under certain conditions [56][57][58]. The justification in these circumstances is not found in the deceased's legal will, but instead in the necessity for societal and familial dignity [57][56][50]. Some selected national approaches will be discussed later in this paper, however at this point this example has merely been raised to demonstrate how posthumous legal protection tends to align closely with the ideas of the interest theory rather than the will theory, whereby the agency of the dead is less significant than the identity and values of the living [39][36][59].

3.3 Implications for interpreting the Convention

As outlined earlier in this paper, the European Court of Human Rights has generally avoided any statement relating to deceased individuals enjoying rights under the Convention [39][36][59]. It could be argued that alongside the philosophical uncertainties, there may also be procedural reasons for this. In this sense, there may also be some institutional pragmatism embedded here in order to avoid the scope of Article 34 ECHR [60][26][61][62]. This has, however, not prevented the Court from showing a growing reliance, indirectly, on procedural obligations and indirect protections

for the purpose of addressing harms that may touch upon death and dignity [63][26][64].

As the title of this research paper suggests, a core focus is on the living instrument principle, which provides a conceptual bridge that can link contemporary moral evolutions in complex areas of human rights, such as the tensions between will theory and interest theories, and state obligations towards the living. At this point in this paper, it is important to note that posthumous dignity claims should arguably not be dismissed as a legal impossibility or even fiction, but has the potential to be embraced as a component of a much richer account of requirements to ensure human rights within a society built on justice, memory, and accountability.

4 The ECHR and the dead: An examination of the development of the living instrument principle within European jurisprudence

The living instrument principle was developed by the European Court of Human Rights as an interpretive tool that would allow the European Convention on Human Rights to remain applicable despite evolving standards in democratic societies [65][1]. It was famously first established in *Tyrer v United Kingdom* [2] when the European Court of Human Rights found that corporal punishment was in-compatible with civilised values [4]. In the almost 50 years since this principle was established, the European Court of Human Rights has applied it throughout its jurisprudence in numerous different contexts [26][66].

However, currently its application in relation to the rights of the dead has been relatively subtle. Presumably, the application of the living instrument principle in relation to deceased people requires careful balancing between the evolving scope of the Convention rights and the rigid, traditional notions of legal personality. In order to critically engage with this subject matter and the approach of the Court, the following section examines some of the approaches taken by the Court in relation to death-related cases, while taking into account jurisdictional and procedural doctrines [9][67][68].

4.1 The procedural duty to investigate under Article 2 ECHR

The right to life, which is protected under Article 2 ECHR, is probably one of the strongest examples in which the procedural obligations link the rights of the living and the deceased [9][69]. The reason for this can be found in the fact that Article 2 not only protects individuals from arbitrary deprivation of life, but also imposes positive obligations on states to take active measures to prevent death, as well as effectively investigate deaths in circumstances in which the state may have been involved, or in which there is a heightened public accountability [70][9][71]. As such, this duty can be understood as one of the leading vehicles through which the treatment of the dead has been addressed [70][69]. Three landmark cases by the European Court of Human Rights are

often cited to have clarified the procedural obligation under Article 2 ECHR to conduct effective, independent and timely investigations into deaths which may have been caused by state actors or have occurred in state custody [9][70][71]. These cases include *Jordan v United Kingdom* [21], *Kaya v Turkey* [72], and *Al-Skeini v United Kingdom* [22]. *Al-Skeini* is often referred to in academic literature on the right to life as having been important due to its expansion of the extraterritorial scope of the protection of Article 2 [67][68]. However, for the purpose of this examination, it is important to note that whilst the victims in these cases were deceased, the ECtHR framed the procedural obligations in light of the rights of the next of kin instead of the rights of the deceased themselves [69][70]. The case of *Jordan* expanded on this by explaining that the procedural duty within Article 2 was to ensure some form of accountability for unlawful deaths, in order to protect the rights of relatives, as well as to uphold the rule of law [21].

In England and Wales, this obligation was most notably addressed in relation to the coroner's inquest system in the *Middleton* judgment [73]. Following this judgment, coroners in England and Wales need to ascertain not only by what means a person came by their death, but also how, and in what circumstances. The result has been the development of quasi-enhanced inquests in cases in which Article 2 ECHR is engaged, in order to be able to explore the potential of systemic failings within the remit of an inquest [14][74].

Yet, despite these procedural duties being well established, they continue to remain indirect. Accordingly, the deceased are still excluded from the class of right holders, and their dignity is derivatively protected through the obligations owed by the state towards others. We can see how the European Court of Human Rights and their adherence to a cautious interpretation of standing within Article 34 is mirrored here [75]. At the same time, the investigatory obligations derived from Article 2 demonstrate the way the deceased can function as legal catalysts that prompt institutional reform, while also contributing to an affirmation of the dignity of life even after it has ended.

4.2 Articles 3 and 8 ECHR: Emotional suffering, bodily integrity, and the right to family life.

In contrast to the previous section that examined how Article 2 ECHR obligations primarily have been used in developing rights of the dead in relation to investigatory mechanisms involving death at the hands of the state, or in its custody, matters relating to broader issues of posthumous harm and bereavement have often been addressed through Articles 3 and 8 ECHR, which have proven to be more versatile for this purpose [30][11][76]. Article 3 ECHR prohibits torture as well as inhuman or degrading treatment, and Article 8 ECHR ensures respect for private and family life [77][78].

As such, the ECtHR has used these avenues within its jurisprudence to assess the emotional impact adverse treatment of the dead has had on their relatives [11][30].

In *Pannullo and Forte v France* [23] the parents of a four-year-old girl had claimed that delays in returning her body for burial violated their Article 8 rights. The ECtHR

acknowledged that the procedural mishandling of the remains had resulted in significant emotional suffering that amounted to a breach of the applicants' right to respect for family life. It was similarly held in *Sabanchiyeva v Russia*[54] that the cremation of deceased insurgents' bodies by a state, without then returning them to their families for burial, violated Article 8, regardless of the deceased involvement in terrorist activities. As mentioned earlier in this paper, an insightful case can be found in *Akpınar and Altun v Turkey*[24], in which the applicants' sons had been killed by security forces, yet their bodies were not returned. Although the majority opinion of the Court was that there had not been a violation of Article 3 or 8 ECHR due to the lack of proof of ill treatment of the bodies or deliberate harm, the dissenting opinion of Judge Fura-Sandström was particularly noteworthy. In this sense, while acknowledging that the ECtHR had not previously applied Article 3 to disrespect for a dead body, she highlighted that Article 3 was intended to protect bodily integrity and human dignity. She argued that this duty could not be understood to end at death in circumstances in which a person was killed by security forces and the corpse is then subjected to deliberate and cruel acts. In her opinion, this kind of conduct constituted an evident affront to human dignity and, thus, amounted to degrading treatment within the meaning of Article 3.[54]

For the purpose of the arguments of this research, her dissent is also significant due to its explicit reference to national constitutional understandings, in particular German law. As such, in order to support her proposition that "human dignity extends not only to the living but also to the dead," she referred to the German Constitutional Court's *Mephisto* decision[79] as well as the German Basic Law's Article 1, which protects dignity[102]. This example was used as an illustrative example of a domestic legal tradition in which the dead continue to be owed honour and respect, and according to which dignity is understood as non-derogable. This comparative move by Judge Fura-Sandström points towards the way national jurisprudence and evolving domestic values form the normative materials applied via the living instrument principle by the ECtHR.

Although this opinion did not result in concrete rulings of the Court, it is an indication of changes in the evolution of understanding, and how the living instrument principle can be a tool to push the rights protected within the Convention towards the recognition of the emotional and cultural significance of death[80].

4.3 Living instrument as a framework for posthumous accountability

Although the jurisprudence relating to rights and deceased individuals is scattered across different circumstances and approaches relating to Articles 2, 3 and 8, a closer examination of the wider application signals a distinctive jurisprudential strategy[11][30]. It is clear that the European Court of Human Rights is still resisting making any declaration in the direction of deceased individuals holding any rights under the European Convention on Human Rights, yet there is a growing body of norms that aim to protect their treatment, memory, and significance[30][76][11]. The general practice appears to be that these norms are justified through the impact they have on the living, including next of kin, the wider public, or institutional trust in democratic

systems. But ultimately, an argument can be made that they nevertheless rely on a moral commitment to the idea that people, even when they are no longer living, still matter[76].

When examining the living instrument principle through the lens of the cautious approach to the applicability of rights to the deceased, one cannot help but understand that the living instrument principle is more than just a mechanism applied by the courts for temporal evolutions of rights, but it interacts with the moral compass of the society in which it is being used[81][80]. Within the Council of Europe, this process is guided by the wording of the Convention towards a broader recognition of harms which are not explicitly legislated for in a narrow literal interpretation of the text, but would still nonetheless fall within the overall essence of what the Convention has set out to achieve[82][81].

5 Posthumous protection in practice: national and European approaches

Considering the fact that the living instrument principle relies heavily on the collective of national European understandings, and how these evolve over time throughout these societies, it is advisable to look beyond the jurisprudence of the Council of Europe, which has up until now been cautious in the evolution of the subject matter, towards developments within national legal approaches to rights of the deceased [76][55][81]. This is particularly significant in order to make potential predictions as to where the living instrument principle may lead developments in this area in European jurisprudence in the future [81][80][76]. As will be showcased in this section, many national legal systems within the Council of Europe have relatively robust legal frameworks that address protecting the deceased [76][55][49]. Many of these are underpinned by shared values including dignity, respect for the body, as well as cultural and religious practices, and can be interpreted as reflecting broader moral and legal sensibilities across democracies in Europe [76][55][30].

5.1 The United Kingdom: inquests, PFDs, and the Middleton legacy

It should be noted that the focus of this section is on the systems in England and Wales, and not on the Scottish system, as England and Wales has one of the potentially most rigorous national implementations of the European Convention on Human Rights, Article 2 procedural obligations, through the coronial inquest system [83][84][74]. This is because in England and Wales, deaths which are deemed sudden, violent, unexplained, or potentially connected to state failings are required to be investigated through the coroner's inquest system [85][90][74]. Within this system, a coroner is an independent

judicial office holder who is responsible for holding inquests, which are public court-based hearings designed to establish certain basic facts of these specific deaths [81][87][74]. These facts are determined by investigating how, when, and where a person came by their death, although in certain specific cases, the wider circumstances of the death can be investigated as well [88][89][74]. Coronial inquests within the system are inquisitorial rather than adversarial public inquiries, in which evidence is heard from witnesses and experts, which allows participation by interested persons [90][91][74]. The inquests are not mechanisms to determine criminal guilt or civil liability, but instead they can be understood as the main domestic procedure through which the investigative obligations under Article 2 ECHR take place, most importantly in circumstances in which the state may have had some involvement in the death [92][93][74]. A key aspect of the inquest system in England and Wales is the mechanism by which prevention of future death reports can be issued by a coroner if an ongoing risk is identified, for the purpose of prompting remedial action [86][94][95].

The coronial system in England and Wales has been heavily influenced by the Human Rights Act 1998, as well as the landmark decision in *R (Middleton) v West Somerset Coroner*, which broadened the scope of inquests that concerned Article 2 issues relating to state involvement in death to also be able to examine how a person came by their death, rather than merely by what means, to ensure that wider systemic or institutional failings could be uncovered [89][93][74].

As mentioned earlier, coroners have the authority to issue prevention of future death reports under Regulation 28 of the Coroners (Investigations) Regulations 2013 [86][94][95]. The reports are addressed to organisations, institutions, or authorities who are deemed capable of taking action to remedy any of the failings which may have contributed to the death and could risk future deaths in a similar fashion [96][86][95]. Although PFDs are non-binding, they are an important tool to ensure posthumous accountability, in which the death of an individual and the circumstances of this death might contribute to improvements for the purpose of preventing deaths of others in the future [94][95][74]. It is important to note, however, that the prevention of future deaths mechanism in England and Wales has limitations, in particular in relation to its enforcement [86][95][94]. Currently, numerous scholars and practitioners continue to call for improvements in the oversight and enforcement of this mechanism [97][95][74].

5.2 France and Germany: personality, privacy and reputational rights after death

Jurisdictions such as France and Germany have been included in this paper as two examples of European jurisdictions in which personality rights have been extended beyond death on the basis of constitutional and civil law foundations [98][99][29].

The Civil Code in France recognises posthumous rights to respect for the memory and dignity of a deceased [100][98][99]. In relation to this, relatives of deceased individuals have been granted standing by the French courts for the purpose of bringing actions against violations of posthumous personality rights [99][101][29]. These kinds of violations include, for example, cases of defamation or misuse of their relatives'

images [99][101][29]. This legal stance has been developed within the French jurisdiction on the basis of a broader interpretation of the *personnalité juridique* [99][101][29].

According to the French stance in this matter, the *personnalité juridique* is extinguished at death, but nevertheless leaves behind certain residual interests which can be recognised on the basis of relational or moral claims [99][101][98]. A noteworthy example of posthumous rights in France can be found under Article 171 of the French Civil Code [99][101][29]. According to this provision, posthumous marriage is permitted in certain exceptional circumstances, in the event that one of the future spouses has died after the completion of official formalities unequivocally marking their consent [99][101][98].

It is worth noting, however, that this provision is largely symbolic, and the provision later makes clear reference to the fact that the marriage in these circumstances would not entail any intestate succession rights in favour of the surviving spouse, and also no matrimonial property regime would be deemed to have existed between the spouses [101][29][98]. The provision also makes clear that the deceased would not have been consenting post-death, and it is still not acknowledging any will or authority on behalf of someone who has died [101][29][99]. Instead, the provision explains that the effects of the marriage would go back to the day before the death of the spouse, so it would have been assumed that this consent would have taken place whilst they still had the authority to do so [101][98][99].

Germany, as another example, holds the view that the general right of personality, which is laid out in Article 2(1) of the German Basic Law, read in conjunction with Article 1(1) on human dignity, continues to cover the honour and memory of a deceased in its protective scope [29][99][102]. In particular, in the *Lebach* case (BVerfGE 35, 202), it was determined that there needed to be a balance struck between the reputational rights of a deceased person and freedom of the press [103][99][102]. The emphasis in this case was, however, on the potential harm negative publications could have on surviving relatives, but also on the potential to unjustly tarnish the memory of the deceased [29][103][99].

The reason these two examples have been included in this paper is that they showcase contrasting views to the European Court of Human Rights' more indirect approaches [98][29][99]. This also shows how some of the domestic courts within the member states of the Council of Europe already recognise that individuals can still be considered normative subjects even after death, with dignity that can be protected legally in their own right, albeit via proxies [102][99][104].

5.3 Sweden, Poland and Eastern Europe: ritual, culture and state obligation

The emphasis in the Nordic and Eastern European countries in relation to the legal standing of deceased individuals is largely related to cultural norms around burial, bodily integrity, as well as collective memories [105][106][107]. The legal application

mostly found within the areas of administrative law or public health legislation [107][106][108].

For example, in Sweden it is considered a criminal offence under the Penal Code, *Brottsbalken*, to desecrate graves or interfere with the remains of deceased individuals [105][106][107]. This reinforces the social taboo against disturbing the dead within Swedish criminal law [106][105][105]. Moreover, communal and symbolic death rituals are recognised through the Swedish administrative regulations which address burial practices, cremation, as well as handling of remains [105][106][107]. Although this does not necessarily equate the same legal concepts as rights, they do reflect the social values that influence legislation in Sweden in relation to respect and non-instrumentalisation [107][106][99].

In Poland, as well as other jurisdictions within Eastern Europe, there is a growing body of case law in relation to the repatriation of remains, the construction of memorials, as well as disputes over religious rights [108-110]. In addition to basing a lot of these provisions on the right to family life under Article 8 ECHR, there is also a reliance on further national traditions, including those relating to collective mourning, as well as the dignity of the dead as a form of public interest [108-110].

Although these examples are quite diverse, they exemplify how relational, cultural and ethical dimensions of deceased individuals continue to be significant within national legal structures [99][106][108]. Although the deceased are not considered for mal rights bearers, matters including their memory, bodily integrity and public image are nevertheless treated within legal mechanisms as relevant and worthy of protection [106-108].

5.4 European convergence: Towards an emergent normative consensus

As mentioned repeatedly throughout this paper, the European Court of Human Rights has refrained from making any direct, explicit statements in relation to the potential of deceased individuals having rights under the Convention [111][110][124]. However, when examining some examples from the national jurisdictions of its member states, there is an emerging trend among European states that deceased individuals are not insignificant, and certain moral components remain worthy of legal protection [98][99][29]. Within the French legal system, it was seen that the dead can have certain civil law protections [100][101][104]. In Germany it was seen how deceased individuals may have national constitutional protections [102][79][103]. England and Wales have a unique investigatory mechanism for unnatural, violent or uncertain deaths, in which there is a broad obligation of legal scrutiny of any non-natural deaths [81][86][74]. Overall, this signifies the understanding across national jurisdictions that posthumous dignity, memory and bodily integrity warrant legal protection [98][106][108]. Taking into account the fact that the European human rights system is not developing in isolation, but can be viewed as a development alongside the domestic jurisdictions of its member states, it cannot be ruled out that the living instrument principle may eventually move beyond the merely derivative reasoning of the

ECtHR towards a broader recognition of the dead possessing a form of residual normative personhood [1][31][80].

6 The future of human rights beyond life: conceptual, doctrinal, and practical implications

The Council of Europe's human rights framework is built on a strong understanding of the importance of the sanctity and dignity of life [112][40][113]. However, a lot has changed socially, culturally, technically, and politically since its inception more than 75 years ago [114][115][116]. As such, it is increasingly being asked to address questions and subject matters that were not originally legislated for in its original design [5][117][118]. One of these questions is: what, if anything, is owed to the dead [32][119][120]? As this paper has demonstrated up until this point, this question is not merely theoretical, but emerges from a complex collection of jurisprudence, national practices, as well as moral institutions, which when viewed together reveal a normative space that extends beyond the living [32][115][40]. It is within this space that certain values that apply to the living leak, or continue to be relevant, in relation to the legacies, vulnerabilities and symbolic meanings of the dead [121][122][40]. In bringing some of the points raised in the previous sections of this paper, the following will reflect on the evolving implications that these shifts bring with them [117][5][115]. In particular, the focus in this next section is on conceptual coherence, doctrinal development, and policy relevance [123][116][124].

As mentioned earlier in this paper, the traditional liberal accounts of human rights take the view that rational agency, bodily autonomy, as well as individual interests cease to apply after death [125][126][127]. However, this rigid stance fails to take into account certain types of harm that modern societies seek to tackle, such as harms relating to the reputation of the deceased, the ability to conduct culturally significant burial practices, access to the remains of loved ones, as well as potential wrongdoing or systemic failures by public bodies, and the importance of state accountability [128][54][129].

However, the legal theoretical underpinning does not need to be as rigid as it currently is, and there are alternative options [32][119][40]. For example, the ideas of relational personhood or posthumous dignity are based on the premise that the dead maintain some form of social identity and symbolic presence, which continues to be legally relevant post-death [119][32][121]. Smolensky [32], for example, makes a case for a relational theory of posthumous rights which is not rooted in autonomy, but instead in the continuous web of obligations between the dead and the living [119][32][120]. In a similar fashion, philosophical and anthropological ideas such as those from Levinas or Derrida position deceased individuals to be subjects of ethical responsibility. Accordingly, they support the view that the memory of the deceased, and their absence, nevertheless continue to shape political and social life [130][116]. In looking back at some of the cases made reference to in earlier sections of this paper, such as Pannullo, Sabanchiyeva, Cipolletta and Al-Skeini, one can recognise some of these underpinning ideas within the legal reasoning applied, in particular as these cases demonstrate an

implicit acknowledgment that deceased individuals do not disappear from moral and legal spheres entirely [128][54][131].

However, the approach taken by the European Court of Human Rights, in which the protection of the dead is indirectly addressed through the rights of the living, such as family members or other next of kin, may not always be effective, and there is a risk of doctrinal asymmetry [132][61][32]. In this sense, similar harms in different cases may go unremedied if there are no living individuals who could be deemed to have been sufficiently impacted, or if a particular standing cannot be established [61][133][123]. When reviewing the existing literature on the subject matter, three potential doctrinal alternative mechanisms are often made reference to [5][32][117]. The first is an evolutive expansion of existing articles, in which the European Court of Human Rights could interpret Articles 2 and 8 ECHR to include autonomous posthumous components, most notably concerning matters such as bodily integrity, treatment of remains, as well as state accountability [124][5][117]. It has been suggested that this kind of alternative solution could be based on existing principles within comparative law, as well as the European Court of Human Rights' own precedent in which it recognises the continuing impact of state action after death [131][115][123]. A second option can be found in the potential reformulation of standing and victimhood under Article 34 [132][61][133]. As such, the definition of victim within this article could acknowledge certain harms, such as state denial of burial, exhumation, or reputational injuries, regardless of whether direct harm to the living can be established [132][61][32]. This kind of approach would align with wider international developments, such as those found within international humanitarian law as well as transitional justice, which are moving towards the understanding that the dead constitute moral subjects of legal concern [120][134][135]. Finally, the third alternative could involve the development of a new procedural or symbolic Article 17-plus [136][116][123]. Scholars such as Smolensky propose the development of a new article or interpretive appendix which asserts a symbolic and procedural status of deceased individuals within legal systems, particularly in cases in which there are potential state failures [32][119][136]. Again, this type of solution would avoid elevating the deceased to full rights bearers, but would instead serve as a form of foundational recognition of the ethical continuity of the living following death [40][32][137].

However, all of these alternative routes will only be possible if the European Court of Human Rights determines that posthumous harms are part of the Convention's telos, namely the protection of human dignity within democratic societies [40][138][117].

A move by the European courts in this direction would have serious practical implications in relation to governance, education and institutional trust [116][130][139]. Learning from the English and Welsh coronial inquest system, an expansion of accountability and responsibility to those who have died could be expanded into further formal obligations of institutional reflection, archival responsibility, as well as symbolic repatriation [130][134][140]. This in turn could have further implications for transitional as well as restorative justice [129][135][130]. For instance, cases such as *Janowiec v Russia*, and the litigation around the Francoist exhumations in Spain, showcase the expanding expectations on states to confront their history, not necessarily only for the sake of the living, but also to honour those who are no longer living [129][141][142]. If a state

fails to protect the dead, there is always a risk of eroding public trust [139][116][123]. As such, the recognition of posthumous dignity also has the potential to reinforce a wider sense of social justice and continuity, which strengthens the rule of law [40][143][139].

If one looks beyond seeing the dead as merely people who are no longer living and no longer hold rights, but instead as symbolic guardians of future standards whose legacies, stories and experiences, when framed and examined in light of human rights discourse, the acknowledgement of continuing moral value no longer relates only to the dead and their loved ones, but becomes a further layer of human rights protection for all rights holders [117][40][130].

7 Conclusion: Reanimating rights through memory, dignity and the living instrument principle

Over the past 75 years, the European Court of Human Rights has built a significant track record of using the living instrument principle as a tool to ensure the European Convention on Human Rights remains responsive in light of evolving values within the Council of Europe and the European democratic societies [118][5][117]. However, the transformative power of the living instrument principle has still evaded addressing many of the uncertainties that have developed over the years in relation to harms that have occurred after death. By examining jurisprudential, theoretical and comparative aspects of posthumous human rights protection, this article has questioned whether the European Convention on Human Rights could offer protection after death.

It has been well established that while the European Court of Human Rights remains firm in its stance to merely protect the deceased indirectly through rights of survivors under Articles 2, 3 and 8 ECHR, certain alternative stances are developing both in academic scholarship as well as in national jurisdictions of its member states. By drawing upon doctrinal legal analysis, comparative law, as well as selected theoretical insights, it has been shown that a more principled and consistent recognition of posthumous legal interests is feasible. This paper has not argued for the promotion of the dead into the full category of right bearers, but instead puts forward a more modest evolutionary recommendation in which human rights law acknowledges that the way deceased individuals are treated should not just be about the deceased themselves, but should reflect the kind of society and its values the legal framework seeks to protect. The purpose of the living instrument was always to ensure that the Convention is interpreted in accordance with contemporary moral expectations of the collective European society. This includes expectations such as the recognition of dignity post-death, as well as the understanding that posthumous harms, particularly when inflicted or permitted by state actors, require legal recognition. It has been demonstrated in numerous domestic jurisdictions of Council of Europe member states such as France, Germany and the United Kingdom that it is possible to incorporate respect for the dead within legal reasoning without under-mining the overall structures of human rights law. The Council of Europe and

the European Convention on Human Rights were built upon suffering and the atrocities of the Second World War [144][115][145]. The idea was to ensure that the harms of the past would not reoccur in the future [138][115][116]. In light of this overall agenda of the Council of Europe to enhance protection through human rights for all, it would not be unreasonable to incorporate the same mechanisms, on a smaller scale, within the continuous evolution of the European human rights framework. By affirming the ethical and moral continuity between life and death, to enhance protection and prevent future harms.

Generative AI Use Disclosure. Generative AI tools (including ChatGPT by OpenAI and Microsoft Copilot) were used as editorial support to refine author-generated content, including cleaning and restructuring an initially spoken/dictated draft into coherent prose, improving grammar, spelling, punctuation, and clarity, and assisting with formatting and consistency checks (including reference-style conversion and de-duplication). Generative AI was also used to support literature search prompts and to help identify possible missing fragments or unclear passages for subsequent author review. No confidential, sensitive, or identifiable personal data were entered into any generative AI system. All AI-assisted outputs were critically reviewed, edited, and independently verified by the author, and the author retains full responsibility for the content, interpretations, and references in this manuscript. **Disclosure of Interests.** The authors of this paper are also editors of this conference proceeding and were part of the conference organizing committee.

Disclosure of Interests. The author has no competing interests to declare that are relevant to the content of this article. However, the author of this paper is also the editor-in-chief of this conference proceeding and was part of the conference organizing committee. Please refer to the ethics statement that accompanies the published proceedings for further details relating to the integrity safeguards that were put in place.

References

1. Letsas, G.: The ECHR as a living instrument: its meaning and legitimacy. In: Føllesdal, A., Peters, B., Ulfstein, G. (eds.) *Constituting Europe: The European Court of Human Rights in a National, European and Global Context*. pp. 106–141. Cambridge University Press, Cambridge (2013). doi: 10.1017/CBO9781139047593.006
2. *Tyrer v United Kingdom* (1978) App no 5856/72, [31]
3. *Loizidou v Turkey* (Preliminary Objections) (1995) App no 15318/89, [71]
4. *Selmouni v France* (1999) App no 25803/94, [101]
5. Dzehtsiarou, K.: European Consensus and the Evolutive Interpretation of the European Convention on Human Rights. *German Law Journal* 12, 1730–1745 (2011). doi: 10.1017/S2071832200017533

6. Wheatley, S.: Interpreting the ECHR in Light of the Increasingly High Standards Being Required by Human Rights: Insights from Social Ontology. *Human Rights Law Review* 24, ngad031–ngad031 (2024). doi: 10.1093/hrlr/ngad031
7. Pitcher, G.: The misfortunes of the dead. *American Philosophical Quarterly* 21, 183–188 (1984)
8. Taylor, J.S.: The myth of posthumous harm. *American Philosophical Quarterly* 42, 311–322 (2005)
9. Chevalier-Watts, J.: Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State? *European Journal of International Law* 21(3), 701–721 (2010). doi: 10.1093/ejil/chq045
10. Harbinja, E.: Post-mortem privacy 2.0: theory, law, and technology. *International Review of Law, Computers & Technology* 31, 26–42 (2017). doi: 10.1080/13600869.2017.1275116
11. Davey, T., Mead, D.: Whose Right Is It Anyway? Clearing a Space for the Application of Human Rights When Dealing with a Corpse. *Medical Law Review* 30, 137–149 (2022). doi: 10.1093/medlaw/fwab029
12. Fovargue, S., Hogg, L.: Mine, Yours, Ours? *Petrova v Latvia and Elberte v Latvia*. *Journal of Trafficking and Human Exploitation* 1, 143–160 (2017). doi: 10.7590/245227717X15090911046539
13. Baker, D.: Deaths after police contact in England and Wales: the effects of Article 2 of the European Convention on Human Rights on coronial practice. *International Journal of Law in Context* 12, 162–177 (2016). doi: 10.1017/S1744552316000033
14. Akhtar, Z.: Coroners court and directions to juries in Article 2 inquests. *Journal of Forensic and Legal Medicine* 65, 1–4 (2019). doi: 10.1016/j.jflm.2019.03.010
15. Nwabueze, R.N., White, M.: Privacy law and the dead – a reappraisal. *Journal of Media Law* 16, 468–502 (2024). doi: 10.1080/17577632.2024.2438395
16. Nwabueze, R.N., Hancock, H.: What’s wrong with death images? Privacy protection of photographic images of the dead. *Computer Law & Security Review* 47, 105715 (2022). doi: 10.1016/j.clsr.2022.105715
17. Hutchinson, T., Duncan, N.J.: Defining and Describing What We Do: Doctrinal Legal Research. *Deakin Law Review* 17(1), 83–119 (2012). doi: 10.21153/dlr2012vol17no1art70
18. Theil, S.: Carefully Tailored: Doctrinal Methods and Empirical Contributions. *Oxford Journal of Legal Studies* 45(4), 1047–1075 (2025). doi: 10.1093/ojls/gqaf029
19. Van Hoecke, M. (ed.): *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* Hart Publishing, Oxford (2011)
20. Michaels, R.: The Functional Method of Comparative Law. In: Reimann, M., Zimmermann, R. (eds.) *The Oxford Handbook of Comparative Law*. pp. 339–382. Oxford University Press, Oxford (2006). doi: 10.1093/oxfordhb/9780199296064.013.0011
21. *Jordan v. United Kingdom*, App. No. 24746/94, Eur. Ct. H.R., Judgment of May 4, 2001, reported in 37 Eur. H.R. Rep. 52 (2001).
22. *Al-Skeini and Others v. United Kingdom*, App. No. 55721/07, Eur. Ct. H.R. (Grand Chamber), Judgment of July 7, 2011, reported in 53 Eur. H.R. Rep. 18 (2011).
23. *Pannullo and Forte v. France*, App. No. 37794/97, Eur. Ct. H.R., Judgment of Oct. 30, 2001.
24. *Akpınar and Altun v. Turkey*, App. No. 56760/00, Eur. Ct. H.R., Judgment of Feb. 27, 2007.
25. *Cipolletta v. Italy*, App. No. 38259/09, Eur. Ct. H.R., Judgment of Jan. 11, 2018.

26. Gerards, J.H.: Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights. *Human Rights Law Review* 18(3), 495–515 (2018). doi: 10.1093/hrlr/ngy017
27. Lupu, Y., Voeten, E.: Precedent in International Courts: A Network Analysis of Case Citations by the European Court of Human Rights. *British Journal of Political Science* 42(2), 413–439 (2012). doi: 10.1017/S0007123411000433
28. Viens, A. M.: *The Right to Bodily Integrity*. Routledge, Abingdon (2017)
29. Kohl, U.: What post-mortem privacy may teach us about privacy. *Computer Law & Security Review* 47, 105737 (2022). doi: 10.1016/j.clsr.2022.105737
30. Buitelaar, J.C.: Post-mortem privacy and informational self-determination. *Ethics and Information Technology* 19(2), 129–142 (2017). doi: 10.1007/s10676-017-9421-9
31. Theil, S.: Is the ‘Living Instrument’ Approach of the European Court of Human Rights Compatible with the ECHR and International Law? *European Public Law* 23(3), 587–614 (2017)
32. Smolensky, K.R.: Rights of the dead. *Hofstra Law Review* 37, 763–803 (2009). URL: <https://scholarlycommons.law.hofstra.edu/hlr/vol37/iss3/3/>
33. McGuinness, S., Brazier, M.: Respecting the living means respecting the dead too. *Oxford Journal of Legal Studies* 28, 297–316 (2008). doi: 10.1093/ojls/gqn005
34. Sperling, D.: *Posthumous Interests: Legal and Ethical Perspectives*. Cambridge University Press, Cambridge (2008)
35. Griffin, J.: *On Human Rights*. Oxford University Press, Oxford (2008)
36. Raz, J.: On the nature of rights. *Mind* XCIII, 194–214 (1984). doi: 10.1093/mind/XCIII.370.194
37. Finnis, J.: *Natural Law and Natural Rights*. Oxford University Press, Oxford (1980)
38. Wenar, L.: The nature of rights. *Philosophy and Public Affairs* 33, 223–253 (2005). doi: 10.1111/j.1088-4963.2005.00032.x
39. Hart, H.L.A.: Are there any natural rights? *Philosophical Review* 64, 175–191 (1955). doi: 10.2307/2182586
40. McCrudden, C.: Human dignity and judicial interpretation of human rights. *European Journal of International Law* 19, 655–724 (2008). doi: 10.1093/ejil/chn043 <https://academic.oup.com/ejil/article/19/4/655/427402>
41. Kramer, M.H., Simmonds, N.E., Steiner, H.: *A Debate Over Rights*. Oxford University Press, Oxford (1998)
42. Bowen, J.: The interest theory of rights at the margins: posthumous rights. In: McBride, M., Kurki, V.A.J. (eds.) *Without Trimmings: The Legal, Moral, and Political Philosophy of Matthew Kramer*. pp. 51–72. Oxford University Press, Oxford (2022). doi: 10.1093/oso/9780198868866.003.0003
43. McCormick, N.: Rights in legislation. In: Hacker, P.M.S., Raz, J. (eds.) *Law, Morality and Society: Essays in Honour of H.L.A. Hart*, pp. 189–209. Clarendon Press, Oxford (1977)
44. Kurki, V.A.J.: Rights, harming and wronging: a restatement of the interest theory. *Oxford Journal of Legal Studies* 38, 430–470 (2018). doi: 10.1093/ojls/gqy005
45. Young, H.: Posthumous bodily integrity and the law. *Marquette Elder’s Advisor* 14, 197–268 (2013)
46. Hadri-Vionnet v. Switzerland, App. No. 55525/00, Eur. Ct. H.R., Judgment of Feb. 14, 2008.
47. Luper, S.: Posthumous harm. *American Philosophical Quarterly* 41, 63–72 (2004)
48. Nagel, T.: Death. *Noûs* 4, 73–80 (1970)

49. Davey, T., Mead, D.: Whose right is it anyway? The duties owed to a deceased and to the living. *Medical Law Review* 30, 1–35 (2022)
50. Waldron, J.: *Dignity, Rank, and Rights*. Oxford University Press, Oxford (2012)
51. Barak, A.: *Human Dignity: The Constitutional Value and the Constitutional Right*. Cambridge University Press, Cambridge (2015). doi: 10.1017/CBO9781316106327
52. Fikfak, V.: Language and persuasion: human dignity at the European Court of Human Rights. *Human Rights Law Review* 22, 1–1 (2022). doi: 10.1093/hrlr/ngac018
53. Heri, C.: Deference, dignity and ‘theoretical crisis’: justifying ECtHR doctrine. *Human Rights Law Review* 24, 1–1 (2024). doi: 10.1093/hrlr/ngad032
54. Sabanchiyeva and Others v. Russia, App. No. 38450/05, Eur. Ct. H.R. (Grand Chamber), Judgment of June 6, 2013.
55. Marsh, T.D.: *The Law of Human Remains*. Lawyers & Judges Publishing Company, Tucson, AZ (2015). URL: <https://www.lawyersandjudges.com/products/the-law-of-human-remains-pdf-ebook>
56. Biélgelmann-Massari, M.: Quand le code civil interdit le mariage et marie les défunts. *Droit et Société* 26, 97–113 (1994). doi: 10.3406/dreso.1994.1265
57. Biélgelmann-Massari, M.: Le mariage posthume: mariage de raison ou mariage d’amour? *Population* 51, 369–396 (1996). doi: 10.2307/1534658
58. Biélgelmann-Massari, M.: La jurisprudence des dispenses civiles au mariage depuis 1960: un apport sur le sens de l’institution matrimoniale. *Droit et Société* 35, 167–187 (1997). doi: 10.3406/dreso.1997.1404
59. Cruft, R.: Rights: Beyond interest theory and will theory? *Law and Philosophy* 23, 347–372 (2004). doi: 10.1023/B:LAPH.0000015417.05737.0e
60. Sefkow-Werner, V.: Consistent inconsistencies in the ECtHR’s approach to victim status and locus standi. *European Journal of Risk Regulation* 16, 1–10 (2025). doi: 10.1017/err.2024.95
61. Leach, P.: *Taking a Case to the European Court of Human Rights*. Oxford University Press, Oxford (2011)
62. European Court of Human Rights. Article 34/35 – Individual applications and admissibility criteria (Case-Law Guide portal). <https://ks.echr.coe.int/>
63. Bates, E.: Alastair Mowbray, *The Development of Positive Obligations Under the European Convention on Human Rights...* (book review). *Human Rights Law Review* 5, 191–195 (2005). doi: 10.1093/hrlrev/ngi010
64. European Court of Human Rights. Guide on Article 2 of the Convention – Right to life (ECHR-KS Guide). <https://ks.echr.coe.int/>
65. Mowbray, A.: The Creativity of the European Court of Human Rights. *Human Rights Law Review* 5(1), 57–76 (2005). doi: 10.1093/hrlr/ngi005
66. Harris, D., O’Boyle, M., Bates, E., Buckley, C.: *Law of the European Convention on Human Rights*. Oxford University Press, Oxford (2023)
67. Milanovic, M.: Al-Skeini and Al-Jedda in Strasbourg. *European Journal of International Law* 23(1), 121–139 (2012). doi: 10.1093/ejil/chr102
68. Ryngaert, C.: Clarifying the Extraterritorial Application of the European Convention on Human Rights. *Utrecht Journal of International and European Law* 28(74), 57–60 (2012). doi: 10.5334/ujiel.v28i74.27
69. Bell, C., Keenan, J.: Lost on the Way Home? The Right to Life in Northern Ireland. *Journal of Law and Society* 32(1), 68–98 (2005). doi: 10.1111/j.1467-6478.2005.00307.x
70. Mowbray, A.: Duties of Investigation Under the European Convention on Human Rights. *International and Comparative Law Quarterly* 51(2), 437–448 (2002). doi: 10.1093/iclq/51.2.437

71. Buckley, C.: The European Convention on Human Rights and the Right to Life in Turkey. *Human Rights Law Review* 1(1), 35–52 (2001). doi: 10.1093/hrlr/1.1.35
72. Kaya v. Turkey, App. No. 22729/93, Eur. Ct. H.R., Judgment of Feb. 19, 1998.
73. R (Middleton) v. West Somerset Coroner, [2004] UKHL 10, [2004] 2 AC 182 (HL)
74. Scott Bray, R., Martin, G.: Exploring fatal facts: current issues in coronial law, policy and practice. *International Journal of Law in Context* 12(2), 115–140 (2016). doi: 10.1017/S1744552316000100
75. Gerards, J., Buyse, A., Andenas, M.: 'Heads and Tails': Admissibility and Remedies at the European Court of Human Rights. *European Convention on Human Rights Law Review* 5(3), 291–301 (2024). doi: 10.1163/26663236-bja10104
76. Conway, H.: *The Law and the Dead*. Routledge, Abingdon (2016). URL: <https://www.routledge.com/The-Law-and-the-Dead/Conway/p/book/9780367596842>
77. Jacobs, F.G., White, R., Ovey, C.: *The European Convention on Human Rights*. Oxford University Press, Oxford (2020). URL: <https://global.oup.com/academic/product/the-european-convention-on-human-rights-9780198847138>
78. Harris, D., O'Boyle, M., Warbrick, C., Bates, E.: *Law of the European Convention on Human Rights*. Oxford University Press, Oxford (2018). URL: <https://global.oup.com/academic/product/law-of-the-european-convention-on-human-rights-9780198784518>
79. Federal Constitutional Court (Bundesverfassungsgericht), Mephisto Case, Decisions of the Federal Constitutional Court (BVerfGE) 30, 173 (1971).
80. Bjørge, E.: *The Evolutionary Interpretation of Treaties*. Oxford University Press, Oxford (2014). URL: <https://global.oup.com/academic/product/the-evolutionary-interpretation-of-treaties-9780198716151>
81. Dzehtsiarou, K.: *European Consensus and the Legitimacy of the European Court of Human Rights*. Cambridge University Press, Cambridge (2015). URL: <https://www.cambridge.org/core/books/european-consensus-and-the-legitimacy-of-the-european-court-of-human-rights/>
82. Letsas, G.: *A Theory of Interpretation of the European Convention on Human Rights*. Oxford University Press, Oxford (2007). URL: <https://global.oup.com/academic/product/a-theory-of-interpretation-of-the-european-convention-on-human-rights-9780199245353>
83. Bray, R. S.: Death investigation, coroners' inquests and human rights. In: *The Routledge International Handbook of Criminology and Human Rights*, pp. 146–156. Routledge, Abingdon (2016)
84. UK Government. Coroners and Justice Act 2009. <https://www.legislation.gov.uk/ukpga/2009/25/contents>
85. UK Government. Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. <https://www.legislation.gov.uk/asp/2016/2/contents>
86. UK Government. Coroners and Justice Act 2009 (duty to investigate certain deaths). <https://www.legislation.gov.uk/ukpga/2009/25/contents>
87. UK Government. Coroners (Investigations) Regulations 2013 (SI 2013/1629) (PFD procedural framework and limits). <https://www.legislation.gov.uk/uksi/2013/1629/contents/made>
88. UK Judiciary. Coroners: guidance and resources (overview of office-holder role and inquest function). <https://www.judiciary.uk/guidance-and-resources/coroners-guidance/>
89. UK Government. Coroners and Justice Act 2009 (matters to be ascertained at inquest). <https://www.legislation.gov.uk/ukpga/2009/25/contents>
90. House of Lords. R (Middleton) v West Somerset Coroner [2004] UKHL 10. <https://www.bailii.org/uk/cases/UKHL/2004/10.html>

91. UK Government. Coroners (Inquests) Rules 2013 (SI 2013/1616). <https://www.legislation.gov.uk/uksi/2013/1616/contents/made>
92. UK Government. Coroners and Justice Act 2009 (interested persons; participation framework). <https://www.legislation.gov.uk/ukpga/2009/25/contents>
93. UK Government. Coroners and Justice Act 2009 (prohibition on determinations of criminal/civil liability). <https://www.legislation.gov.uk/ukpga/2009/25/contents>
94. UK Government. Human Rights Act 1998. <https://www.legislation.gov.uk/ukpga/1998/42/contents>
95. UK Judiciary. Coroners: guidance – Reports to Prevent Future Deaths (Regulation 28 / PFD practice). <https://www.judiciary.uk/guidance-and-resources/coroners-guidance/>
96. Zhang, K., Sethi, N., Mohan, A., Carter, B., Darzi, A., Sevdalis, N.: Lessons from web scraping coroners' Prevention of Future Deaths reports. *Medico-Legal Journal* 91, 142–147 (2023). doi: 10.1177/00258172221141284 <https://pmc.ncbi.nlm.nih.gov/articles/PMC10515464/>
97. UK Judiciary. Coroners: guidance – Reports to Prevent Future Deaths (addressees; response expectations). <https://www.judiciary.uk/guidance-and-resources/coroners-guidance/>
98. UK Parliament. Evidence and reports (context for scrutiny/oversight of coronial recommendations and death investigation). <https://committees.parliament.uk/>
99. Rial-Sebbag, E.: Respect for the body does not cease with death. *Ethics, Medicine and Public Health* 33, 101026 (2025). doi: 10.1016/j.jemep.2024.101026 <https://doi.org/10.1016/j.jemep.2024.101026>
100. Whitman, J.Q.: The two Western cultures of privacy: dignity versus liberty. *Yale Law Journal* 113, 1151–1221 (2004). <https://yalelawjournal.org/article/the-two-western-cultures-of-privacy-dignity-versus-liberty>
101. République française. Code civil (principle: respect due to the human body; post-mortem continuity, see Art. 16-1-1). https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/
102. République française. Code civil (personality/privacy framework relied upon by relatives in practice). https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/
103. Federal Republic of Germany. Basic Law (Grundgesetz), Art. 1(1) and Art. 2(1). https://www.gesetze-im-internet.de/englisch_gg/
104. Federal Constitutional Court (Germany). Lebach decision (BVerfGE 35, 202) (case materials/translation portals). https://www.bundesverfassungsgericht.de/EN/Homepage/home_node.html
105. République française. Code civil (post-mortem respect framework). https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/
106. Swedish Riksdag. The Swedish Penal Code (Brottsbalken) (SFS 1962:700). https://www.riksdagen.se/en/documents-and-laws/document/swedish-code-of-statutes/the-swedish-penal-code-1962700_sfs-1962-700/
107. Nordh, L.: Legal protection of corpses and graves: offences against grave peace. *Australian Journal of Forensic Sciences* 53, 245–257 (2021). doi: 10.1080/00450618.2019.1643764 <https://www.tandfonline.com/doi/full/10.1080/00450618.2019.1643764>
108. Swedish Riksdag. The Burial Act (Begravningslag) (SFS 1990:1144). https://www.riksdagen.se/en/documents-and-laws/document/swedish-code-of-statutes/burial-act-19901144_sfs-1990-1144/
109. Kowalski, W.: Legal status of human remains, with special reference to Polish law. *Santander Art and Culture Law Review* 2, 147–168 (2025). doi:

- 10.4467/2450050XSNR.25.008.21933 <https://ejournals.eu/en/journal/saclr/article/legal-status-of-human-remains-with-special-reference-to-polish-law>
110. Lichwa, K., Stec, P.: Repatriation of human corpses and remains as a problem of cultural heritage law. *Palestra* 9, 101–120 (2023). <https://palestra.pl/en/czasopismo/wydanie/9-2023/artykul/repatriation-of-human-corpses-and-remains-as-a-problem-of-cultural-heritage-law>
 111. Council of Europe. European Convention on Human Rights (Article 8). <https://www.echr.coe.int/the-convention>
 112. Council of Europe. European Convention on Human Rights. <https://www.echr.coe.int/the-convention>
 113. Council of Europe. Statute of the Council of Europe (London, 5 May 1949). <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=001>
 114. Dworkin, R.: *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom*. Knopf, New York (1993) https://books.google.co.uk/books/about/Life_s_Dominion.html?id=7c6Zd3XP5CCc
 115. Council of Europe. The Council of Europe in brief / history. <https://www.coe.int/en/web/about-us/who-we-are>
 116. Bates, E.: *The Evolution of the European Convention on Human Rights: From its Inception to the Creation of a Permanent Court of Human Rights*. Oxford University Press, Oxford (2010) <https://global.oup.com/academic/product/the-evolution-of-the-european-convention-on-human-rights-9780199207992>
 117. Madsen, M.R.: The challenging authority of the European Court of Human Rights: From Cold War legal diplomacy to the Brighton Declaration and backlash. *Law and Contemporary Problems* 79, 141–178 (2016). doi: n/a <https://scholar-ship.law.duke.edu/lcp/vol79/iss1/6/>
 118. Letsas, G.: Strasbourg's interpretive ethic: Lessons for the international lawyer. *European Journal of International Law* 21, 509–541 (2010). doi: 10.1093/ejil/chq018 <https://academic.oup.com/ejil/article/21/3/509/2737680>
 119. European Court of Human Rights. *Tyler v. the United Kingdom* (Application no. 5856/72), Judgment (25 April 1978). <https://hudoc.echr.coe.int/>
 120. De Baets, A.: The posthumous dignity of dead persons (chapter). Wiley Online Library (2023). <https://onlinelibrary.wiley.com/doi/10.1002/9781119806394.ch2>
 121. International Committee of the Red Cross. The dead and their dignity: managing the dead in armed conflict (IHL resource). <https://www.icrc.org/en/document/dead-and-their-dignity>
 122. Derrida, J.: *The Work of Mourning*. University of Chicago Press, Chicago (2001) <https://press.uchicago.edu/ucp/books/book/chicago/W/bo3617087.html>
 123. Levinas, E.: *Totality and Infinity: An Essay on Exteriority*. Duquesne University Press, Pittsburgh (1969) https://books.google.co.uk/books/about/Totality_and_Infinity.html?id=2GptAAAAMAAJ
 124. Kleinlein, T.: Consensus and contestability: The ECtHR and the combined potential of European consensus and procedural rationality control. *European Journal of International Law* 28, 871–893 (2017). doi: 10.1093/ejil/chx052 <https://academic.oup.com/ejil/article/28/3/871/4616681>
 125. Council of Europe. European Convention on Human Rights (Convention text). https://www.echr.coe.int/documents/d/echr/convention_eng
 126. Raz, J.: *The Morality of Freedom*. Oxford University Press, Oxford (1986) <https://global.oup.com/academic/product/the-morality-of-freedom-9780198248071>

127. Feinberg, J.: *Social Philosophy*. Prentice-Hall, Englewood Cliffs (1973) https://openlibrary.org/works/OL2001848W/Social_philosophy
128. Hart, H.L.A.: *Essays on Bentham: Studies in Jurisprudence and Political Theory*. Oxford University Press, Oxford (1982) <https://global.oup.com/academic/product/essays-on-bentham-9780198254676>
129. European Court of Human Rights. *Pannullo and Forte v. France* (Application no. 37794/97), Judgment (30 Oct 2001). <https://hudoc.echr.coe.int/>
130. European Court of Human Rights. *Sabanchiyeva and Others v. Russia* (Application no. 38450/05), Judgment (6 Jun 2013). <https://hudoc.echr.coe.int/>
131. European Court of Human Rights. *Janowiec and Others v. Russia* (Applications nos. 55508/07 and 29520/09), Judgment (21 Oct 2013). <https://hudoc.echr.coe.int/>
132. Teitel, R.G.: *Transitional Justice*. Oxford University Press, Oxford (2000) <https://global.oup.com/academic/product/transitional-justice-9780195157598>
133. European Court of Human Rights. *Al-Skeini and Others v. the United Kingdom* (Application no. 55721/07), Judgment (7 Jul 2011). <https://hudoc.echr.coe.int/>
134. Council of Europe. *European Convention on Human Rights* (Article 34 text). https://www.echr.coe.int/documents/d/echr/convention_eng
135. Council of Europe. *Practical Guide on Admissibility Criteria* (ECtHR). https://www.echr.coe.int/documents/d/echr/admissibility_guide_eng
136. International Committee of the Red Cross. *Missing persons and their families: legal protections and obligations* (IHL resource). <https://www.icrc.org/en/what-we-do/missing-persons>
137. United Nations Office of the High Commissioner for Human Rights. *The right to the truth* (UN thematic materials). <https://www.ohchr.org/en/special-procedures/wgeid/right-truth>
138. Council of Europe. *Brighton Declaration* (High Level Conference on the Future of the ECtHR) (20 Apr 2012). https://www.echr.coe.int/documents/d/echr/2012_brighton_finaldeclaration_eng
139. Council of Europe. *European Convention on Human Rights* (Convention text / telos context). https://www.echr.coe.int/documents/d/echr/convention_eng
140. Council of Europe. *European Convention on Human Rights* (Preamble). https://www.echr.coe.int/documents/d/echr/convention_eng
141. Tyler, T.R.: *Why People Obey the Law*. Princeton University Press, Princeton (2006) <https://press.princeton.edu/books/paperback/9780691126739/why-people-obey-the-law>
142. Council of Europe. *European Convention on Human Rights* (procedural obligations context). https://www.echr.coe.int/documents/d/echr/convention_eng
143. European Court of Human Rights. *Gutiérrez Dorado and Dorado Ortiz v. Spain* (Application no. 34392/14), Decision (27 Mar 2018). <https://hudoc.echr.coe.int/>
144. Council of Europe. *European Convention on Human Rights* (Articles 2/3/8 interpretive context). https://www.echr.coe.int/documents/d/echr/convention_eng
145. Council of Europe. *European Convention on Human Rights* (rule of law / democracy framing in Preamble). https://www.echr.coe.int/documents/d/echr/convention_eng
146. Council of Europe. *Council of Europe history / origins*. <https://www.coe.int/en/web/about-us/who-we-are>
147. Council of Europe. *Statute of the Council of Europe* (1949). <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=001>

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

