

The Development of Human Rights Protection in Cross-border Personality Rights and Tort Conflict Laws

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Abstract: *Personality rights are basic rights related to human dignity in the concept of human rights protection, and respect for personality rights is the basic prerequisite for safeguarding other human rights. Human rights protection exerts a profound impact on the value of legislation and enforcement practices of private international laws in the field of cross-border personality rights infringement in various countries, which is mainly manifested in the integration of substantive justice and the humanistic care concept of protecting the rights of vulnerable groups into formal justice, and expands the development space of human rights protection ideas in cross-border personality rights and tort conflict laws. The diversity of human rights protection values determines that cross-border personality rights infringement may lead to conflicts between personality rights and other basic rights, such as freedom of speech. To reconcile such conflicts, a workable method is to prioritize personality rights protection in accordance with the hierarchy of rights theory in the value judgment of public order reservation or to clarify the limits of the right holder's tolerance obligation through the limited application of the principle of proportionality. China's current cross-border personality rights and tort conflict law can optimize the protection of the rights of vulnerable groups by diversifying the options of available legal methods, and establish a balancing mechanism between personality rights and freedom of speech, so as to improve China's legal protection system for human rights in the field of foreign-related civil and commercial affairs.*

Keywords: human rights protection ♦ protection of the rights of vulnerable groups ♦ substantive justice ♦ personality rights and tort conflict laws

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The Political Bureau of the Central Committee of the Communist Party of China (CPC) conducted its 37th collective study session on the development path of human rights in China on February 25, 2022. At the session, Xi Jinping, General Secretary of the CPC Central Committee emphasized that “respecting and safeguarding human rights is the unremitting pursuit of the Communist Party of China,” General Secretary Xi Jinping called for the path of human rights development in China to be resolutely followed, greater emphasis to be placed on respecting and protecting human rights, the development of China’s human rights cause to be better promoted, and for the country to actively participate in global human rights governance.¹ Later, Professor Zhang Wenxian proposed that China has achieved historic accomplishments and undergone historical changes in the legal protection of human rights in the new era.² In this regard, the “Personality Rights” section of the *Civil Code of the People’s Republic of China* (hereinafter referred to as the *Civil Code*) is one of the essential measures to implement the CPC Central Committee’s requirements for the legal protection of human rights. It is a necessary requirement to implement the guiding principles of the *Constitution of the People’s Republic of China* (hereinafter referred to as the *Constitution*) regarding “the state respecting and protecting human rights” and the relevant provisions and spirit of personality rights, and it is particularly important for implementing the specific requirements put forward in the 19th CPC National Congress and the second plenary session of the 19th CPC Central Committee regarding “protecting people’s personal rights, property rights, and personality rights.”³ Additionally, the *Human Rights Action Plan of China (2021-2025)* also includes plans for personality rights protection. On October 16, 2022, General Secretary Xi Jinping mentioned at the 20th CPC National Congress that, in responding to the sudden outbreak of COVID-19, the country put lives above all else. The country has protected the people’s health and safety to the greatest extent possible and made tremendously encouraging achievements in both epidemic response and economic and social development.⁴ It is evident that respecting personality rights is a fundamental prerequisite for protecting other human rights. Legally, personality rights are the most direct and comprehensive laws protecting individuals’ rights, such as life, health, personal dignity, personal information, and more. Previous research in the field of human rights has largely focused on political science, Marxist theory, constitutional law, international human rights law, labor law, criminal law, civil law, criminal procedural law, environmental law, and other disciplines. However, few scholars have focused on ensuring human rights through the legal framework from the private international law perspective of personality

1. Xinhua News Agency, “Xi Jinping Emphasizes Unwavering Commitment to Follow China’s Path of Human Rights Development and Better Promote the Progress of China’s Human Rights Cause during the 37th Group Study Session of the Central Political Bureau,” *People’s Daily*, February 27, 2022, page 1.
2. Zhang Wenxian, “Historic Achievements in Protecting Human Rights under the Rule of Law in the New Era,” *People’s Daily*, May 11, 2022, page 13.
3. “The Draft of the Civil Code Compilation is Submitted for Review for the First Time,” *People’s Daily*, August 28, 2018, page 6.
4. Xinhua News Agency, “The Verbatim Record of the Opening Session of the 20th National Congress of the Communist Party of China” (October 16, 2022), accessed October 17, 2022, <http://www.xinhuanet.com/politics/cpc20/zb/xhwkml016/wzsl.htm>.

rights. Currently, domestic scholars mainly focus on discussions surrounding the impact of European Union human rights legislation on the recognition and enforcement of judgments and jurisdiction, or provide macro-level discussions on the influence of constitutional rights on conflict law. There are also abstract generalizations about the relationship between human rights protection and private international law, along with analyses of the impact of human rights protection on the field of family relations. Few scholars delve deeply into the detailed impact of human rights protection on the development of conflict law in specific cases of personality rights infringement. In such a context, there are actually several questions that need to be comprehensively addressed: What is the value trend of human rights protection in the development of cross-border personality rights and tort conflict laws? Through what channels does human rights protection influence the development of cross-border personality rights and tort conflict laws? Will human rights protection in the development of cross-border personality rights and tort conflict laws lead to conflicts of rights due to differences in national values? How do we coordinate these conflicts of rights? How does the current legal framework for personality rights and tort conflicts in China meet the needs of human rights protection?

I. The Value Trends of Human Rights Protection in the Development of Cross-border Personality Rights and Tort Conflict Laws

For a long time, private international law, as the branch of law dealing with cross-border civil and commercial relations, seemed to be minimally influenced by other branches of law. This situation persisted until the Conflicts Law Revolution in the 1930s in the United States, which brought about a significant change. The notion that the results, regardless of the substantive laws of the countries involved, could be absolutely just by finding the “seat” of the legal relationship and completing the judicial task through it tended to overlook the differing interpretations of justice values in the substantive laws of various countries. It also struggled to overcome the rigid application of conflict norms, which could lead to substantively unjust and inflexible outcomes. The Conflicts Law Revolution in the United States did not destroy the inherent stability requirements of private international law; instead, it added the goal of achieving a just outcome to the process of legal choice. This also signifies that the development of conflict law began to emphasize the integration of substantive justice and formal justice in rights protection.⁵ It expanded the development space for the concept of human rights protection within conflict law as well. After World War II, the conceptual framework of human rights protection rapidly expanded globally, and during this period, the personality rights system also experienced rapid development. The emergence of the concept of personality rights is imbued with a strong humanistic perspective. It is a means adopted to protect the natural rights inherent in being human. Regardless of an individual’s gender, political status, wealth, or other cir-

5. Song Xiao, “Private International Law During the End of the 20th Century — Progress or Regression,” *Civil and Commercial Law Review* (Hongkong: Jinqiao Culture Publishing (Hong Kong) Co., Ltd., 2002), 362-423.

cumstances, everyone is considered to have equal personality rights.⁶ As a result, the concept of human rights protection is gradually being internalized into the substantive value orientation of conflict laws related to personality rights infringements, positively influencing the legislative and judicial practices of domestic personality rights and tort conflict laws.

A. From formal justice to emphasizing substantive justice

The impact of human rights protection on civil legal activities has not always been limited to the level of national substantive law. Since the mid-20th century, the increased global mobility of populations due to rapid globalization has led to the influence of the legal values of human rights protection in the field of private international law. Before the 20th century, theories and legislation in private international law pursued the universality of legal application and consistency of judgment results, adopting an attitude of equal treatment towards the substantive laws of various countries. Whether Bartolus's "statute theory" or Savigny's theory of "the seat of legal relationship" (*Sitz des Rechtsverhältnisses*), they did not assess whether the results of applying the substantive laws of various countries were conducive to the realization of a particular order. Instead, they mechanically analyzed the connections between legal relationships that needed to be addressed and the laws of a specific territory. Without examining the consequences of substantive law application, the approach that refers to Rawls's standards of formal justice and substantive justice in his *A Theory of Justice*,⁷ obviously only possesses the value of "formal justice." With the resurgence of the public policy reservation principle by Pasquale Stanislao Mancini, private international law began to pay attention to the consequences of substantive law application. However, this was not a direct application of the idea of human rights protection. Instead, it involved the negative denial of the improper application of foreign substantive law through the barrier of domestic public policy. In such cases, the content of the public policy reservation system was more colored by the order of managing domestic affairs. The private international law revolution in the United States in the 1930s sought the goal of substantive justice in various legal theories of torts. Whether it was Brainerd Currie's approach of "government interest analysis" or the "most significant relationship" principle in judicial practice, these legal theories oriented their consideration of legal choice methods toward the results of handling cases. Ultimately, these choices of methods played a role in protecting the vulnerable groups and victims in actual cases. Although these doctrines did not directly change the application of conflict law based on human rights protection, they implied the possibility of human rights protection values intervening in legal choice. In fact, some scholars have found that the legislation of private international law in some European countries has also absorbed the practice of pursuing substantive justice in the American private international law community. They gradually transformed this value pursuit into the revision

6. Sun Xianzhong, "The Civil Code Implements Several Points of Systematic Scientific Logic," *Oriental Law* 4 (2020): 27.

7. John Rawls, *A Theory of Justice*, translated by He Huaihong, He Baogang and Liao Shenbai (Beijing: China Social Sciences Press, 1988), 228.

of conflict norms related to individual rights.⁸ In this process of transformation, these European countries did not use the “justice” scale ambiguously or vaguely. Instead, they directly incorporated the concept of human rights as value goals. They used the basic rights upheld by the constitution as a comparative scale to verify or modify specific systems in the field of conflict law.⁹ For example, within the scope of contracting parties to the *European Convention on Human Rights*, judges in each country are obligated to ensure that the outcome of every foreign-related case does not conflict with the basic rights outlined in the *European Convention on Human Rights*. Otherwise, the basis for applying foreign law in such foreign-related cases is excluded.

B. From formal equality to emphasizing the protection of the rights of vulnerable groups

From the mid-20th century onward, whether in the field of public international law, international economic law, or private international law, a common trend has been the protection and care of humans. In the realm of personality rights and tort conflict laws, the focus on the protection of the rights of the vulnerable groups reflects a humanistic concern, which is also an aspect of the expansion of the concept of human rights protection in international private law. The protection of human dignity has gained widespread recognition in the international community, manifested through various human rights conventions ratified by countries worldwide. Examples include the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Convention on the Rights of the Child*, and the *Convention on the Rights of Persons with Disabilities*. These conventions explicitly protect fundamental personality rights such as the right to life, human dignity, privacy, freedom of speech, and more. Although it is commonly held in academia that the content of these conventions belongs to public law, and that the obligations of the conventions only directly bind member states and their government entities, thus not directly affecting the field of private international law, it cannot be denied that, under the indirect influence of the provisions of these human rights conventions, there is a noticeable humanistic concern evident in the protection of international labor in the field of international investment within international economic law and the application of the principle of protecting the rights of the vulnerable groups in private international law. The protection of the dignity of the vulnerable groups is an emphasis on substantive equality and equality of outcomes, recognizing that formal equality under certain legal relationships may not fully harmonize the differences and potential discriminatory

8. In the revolution in conflict laws in the United States, scholars such as Cavers proposed the “doctrine of outcome selection,” Leflar advocated the “better law approach,” and Reese put forward “the principle of the most significant relationship,” all of which require considering the fairness of the application results of substantive law in specific cases. Xing Gang, *International Commercial Law* (Beijing: China Legal Publishing House, 2018), 102-106.

9. Yuan Faqiang, “The Influence of Human Rights Protection on the Development of Conflicts of Law,” *Present-day Law Science* 6 (2004): 111.

equality structures among individuals.¹⁰ This approach aligns with the specific requirements of substantive fairness in Xi Jinping Thought on the Rule of Law as well.¹¹

The system of protecting vulnerable groups in private international law typically refers to a legal application mechanism that, guided by the principle of protecting the vulnerable groups, imposes limitations on party autonomy or grants vulnerable groups the unilateral right to choose the applicable law in specific legal norms. This approach aims to achieve a legal application system that prioritizes substantive justice. Some argue that there may be tension between the concept of protecting the rights of the vulnerable groups and the universal ideals of human rights protection. While this concern is valid, the idea of protecting the rights of the vulnerable groups is not universally applicable to conflict norms in all legal relationships. Instead, it represents a value trade-off for balancing formal equality and substantive equality dynamically. It is one of the trends in the development of the concept of human rights protection, especially in specific areas such as personality rights infringement, and together with principles like equality in the application of contract law, it forms part of the contemporary values in private international law. The concept of human rights protection has influenced contemporary private international law legislation to respect party autonomy as much as possible in matters involving foreign marriage and family, inheritance, tort, and personality rights. In cases related to support and guardianship, the applicable laws aim to maximize the protection of the rights of the supported or guardian individuals while respecting their autonomy.¹² Therefore, the meaning of vulnerable groups in private international law differs from the general connotation of the term in substantive rights and obligations. In the context of private international law, it specifically refers to certain groups of individuals in a vulnerable position in situations such as legal choice or the selection of dispute resolution venues. This concept does not necessarily imply inequality in substantive rights.

In the context of cross-border personality rights infringement, granting the victim the unilateral right to choose the applicable law is one specific practical application of the principle of protecting the rights of the vulnerable groups. In cross-border personality rights infringement cases, compared to the infringing party, the victim often faces challenges such as unfamiliarity with the law of the jurisdiction where the infringement occurred, the difficulty of gathering evidence, the long and cumbersome process of pursuing legal action, the time-consuming procedures for notarization and translation, as well as language barriers. Consequently, cross-border personality rights infringement lawsuits often remain unresolved due to the high costs associated with enforcing rights.¹³ Therefore, in the case of cross-border personality rights infringement,

10. Marsha A. Freeman, Christine Chinkin and Beate Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A commentary, volume 1*, translated by Dai Ruijun (Beijing: Social Sciences Academic Press, 2020), 70.

11. Hu Yuhong, "Respect, Decency, Equality: Dignity in Xi Jinping Thought on the Rule of Law," *Oriental Law* 4 (2022): 4.

12. Yuan Faqiang: "Reflection and Reconstruction of the Protection System for Vulnerable Groups in Private International Law in China," *Studies in Law and Business* 6 (2014): 102-103.

13. Xu Donggen, "Humanitarian Care and Protection of Vulnerable Groups Interests in Private International Law," *Contemporary Law Review* 5 (2004): 20.

the victim is considered the weaker party and requires enhanced legal protection. To comprehensively protect the victim, modern private international laws in various countries often stipulate the application of laws that favor the victim or allow the victim to choose the law that is advantageous to them. Provisions regarding tort of personality right, such as Article 139 of the *Swiss Federal Code on Private International Law* (2017 revision)¹⁴, Article 55 of the *International Private Law Act of Montenegro* (implemented in 2013),¹⁵ Article 99, Section 2 of the *Belgian Codification of Private International Law* (implemented in 2004),¹⁶ Article 35 of the *Turkish Act on International Private and Procedure Law* (1) (Act No.5718 revised in 2007),¹⁷ all grant the victim a certain right to choose the applicable law. In this way, the victim, guided by

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14. "Infringement of personality rights," Article 139 of the *Swiss Federal Code on Private International Law* (2017 revision): "1. Claims founded on an infringement of personality rights by the media, especially by the press, radio, television, or other means of public information, shall be governed at the option of the injured party by:
- a. The law of the State in which the injured party has his place of habitual residence if the tortfeasor should have foreseen that the effects would occur in that State; b. The law of the State in which the tortfeasor has his place of business or place of habitual residence; or c. The law of the State in which the effects of the infringement have occurred if the tortfeasor should have foreseen that the effects would occur in that State. 2. The right to reply against the media shall be governed exclusively by the law of the State in which the publication appeared or from which the radio or television program was broadcasted. 3. Paragraph 1 shall also apply to claims founded on an infringement of personality rights through the processing of personal data and claims founded on an impairment of the right to information concerning personal data." Zou Guoyong translated and annotated, *Translation of Foreign Private International Law Legislation* (Wuhan: Wuhan University Press, 2017), 380.
15. Article 55 of the *International Private Law Act of Montenegro* (implemented in 2013) regarding personality rights torts: "The law applicable to obligations arising out of the breach of the right of person by way of the media, the press in particular, radio, television and other media, shall, at the choice of the injured party, be the law of the state: 1) in which he has his habitual residence; 2) in the territory of which the damage occurred; or 3) in which the person responsible has his habitual residence or domicile. In the cases from subparagraphs 1 and 2 of paragraph 1 of this Article, the person claimed to be responsible needs to have been able to reasonably expect that the damage will occur in the state of habitual residence or in the territory of which the damage occurred. The law applicable to the right to publish a correction in case of a breach of right of person through the media shall be the law of the state in which the right of person was breached through the media. Paragraph 1 of this Article shall also apply to obligations arising out of the breach of rights relating to the protection of data on person." Zou Guoyong translated and annotated: *Translation of Foreign Private International Law Legislation* (Wuhan: Wuhan University Press, 2017), 354.
16. Paragraph 2, Article 99 of the *Belgian Codification of Private International Law* (implemented in 2004): "For defamation, infringement of privacy, or personality rights, the law of the country where the tort occurred or where the damage occurred or is likely to occur shall apply. Specifically, this is chosen by the plaintiff, unless the tortfeasor can prove that they could not have foreseen that the damage would occur in that country." Zou Guoyong translated and annotated, *Translation of Foreign Private International Law Legislation* (Wuhan: Wuhan University Press, 2017), 380.
17. "Liability for Violation of Personality Rights," Article 35 of the *Turkish Act on International Private and Procedure Law* (1) (Act No.5718 revised in 2007): "(1) The claims resulting from the violation of personality rights via media such as press, radio, television or via Internet and other mass communications, according to the preference of the damaged party, shall be subjected to; a) The law of the habitual residence of the damaged party in the event that the party who caused the damage was in a position to know that the damage would occur in that country, b) The law of country where the workplace or the habitual residence of the party who caused the damage is located, or c) The law of country where the damage occurred in the event that the damaging party was in a position to know that the damage would occur in that country. (2) In case of violation of personality rights, the right of reply, in periodicals, is subject to the law of country where the imprint is made or the program is broadcasted. (3) Paragraph one of the articles shall apply to the claims resulting from the violation of personality by processing personal data or limiting the right of information on personal data." Zou Guoyong translated and annotated, *Translation of Foreign Private International Law Legislation* (Wuhan: Wuhan University Press, 2017), 296.

the conflict rules mentioned above, would choose the law that favors the protection of their substantive rights. This ensures that substantive laws that are not conducive to protecting the weaker party lack opportunities for application, achieving effects that substantive laws alone may not accomplish. This also serves as a measure to evaluate the effectiveness of methods in protecting the weaker party in conflict norms related to personality rights infringement.¹⁸ Therefore, in practice, human rights values should not only avoid unreasonable differential treatment leading to discriminatory effects but should also focus on how to remedy differences between rights holders in disadvantaged situations, ensuring that the value of equality can truly be realized. This is the most crucial concern in the philosophy and practice of human rights.¹⁹

In conclusion, throughout the development process of private international law, the value orientation of rights protection has shifted from an emphasis on formal justice to a focus on substantive justice, and from formal equality to an emphasis on the protection of the rights of the vulnerable groups. These changes signify that the concept of human rights protection has a certain development space in contemporary personality rights and tort conflict laws.

II. The Pathway of Human Rights Protection's Impact on the Development of Cross-border Personality Rights and Tort Conflict Laws

The traditional perspective within the continental law system often considers constitutional rights to have a relatively weak impact on conflict laws. However, this situation has undergone a transformation in recent times. In many European countries, traditional conflict norms are rooted in an objective and neutral approach. They aim to identify the applicable law for a case from all potential legal bases involved, irrespective of the impact such a choice may have on the parties involved, devoid of emotional or value judgments. The conventional viewpoint holds that conflict rules, due to their indirect resolution of disputes regarding substantive rights and obligations, seem disconnected from basic rights. However, since the mid-20th century, with the incorporation of human rights protection into international treaties and national constitutions of various countries, the concept of human rights has influenced the development of private international law in legislative, judicial, and international judicial cooperation processes. This situation has gradually challenged and criticized traditional viewpoints. In alignment with these changes, German scholar Beltzke points out that no law shall conflict with fundamental constitutional rights, and private international law is no exception. Similarly, Feitd suggests that the impact of fundamental constitutional rights on conflict laws is manifested primarily in two aspects. First, conflict rules in the legislation of private international law must comply with the inherent value requirements of fundamental constitutional rights. Second, in judicial practice, the application of foreign law should not infringe upon the basic rights outlined in the German

18. Qu Guangqing, "Private International Law Methods Protecting Vulnerable Groups and Its Legislation Improvement — With a Focus on Conflict Norms Protection," *Studies in Law and Business* 5 (2006): 49.

19. Deng Yansen, *The Rule of Law and Human Rights* (Taipei: New Sharing Publishing Company, Limited, 2006), 26.

Constitution.²⁰ While the constitutional regulations on personal freedom and human dignity rights emphasize the relationship between the state and individuals and may not directly apply to legal relations between private individuals, they can influence the interpretation and application of private international law cases, legislative practices, and international judicial cooperation through their embodiment of human rights values.²¹

A. The impact of constitutional supervision on judicial practices in the application of cross-border personality rights and tort conflict laws

Some countries exercise constitutional oversight over the realization of basic rights such as personality rights in judicial cases, impacting the judicial practices concerning the application of laws related to personality rights infringement. Professor Wang Zejian, a civil law scholar, has mentioned in his comparative legal research on personality rights protection in Germany that the construction of personality rights in post-war Germany is based on the collaboration between the Federal Supreme Court and the Federal Constitutional Court. Specifically, each groundbreaking judgment by ordinary courts regarding personality rights goes through a constitutional appeal and is subject to the scrutiny of the Federal Constitutional Court for constitutionality. The rulings of the Federal Constitutional Court are also subject to review for compliance with the provisions of the *European Convention on Human Rights*, with the European Court of Human Rights determining whether they meet international human rights standards.²² The classic case in which the German Constitution directly affects the process of legal choice is the “Spanish” case.²³ This case makes it clear that not only should

20. Wang Baoyin, “Translation and Commentary on the German Federal Constitutional Court’s Jurisprudence on the Effectiveness of Constitutional Basic Rights on Private International Law,” *Jahrbuch des Deutsch-Chinesischen Instituts für Rechtswissenschaft der Universitäten Göttingen und Nanjing* 10 (2013): 282-308.

21. Leading Group for Implementing the Civil Code at the Supreme People’s Court, *Understanding and Application of Personality Rights in the Civil Code of the People’s Republic of China* (Beijing: People’s Court Press, 2020), 19.

22. Wang Zejian, *Law of Personality Rights: Legal Interpretation, Comparative Law, Case Studies* (Beijing: Peking University Press, 2013), 21-22.

23. In this case, a Spanish man residing regularly in Germany intended to marry a German woman who had previously been divorced by a German court. According to Article 13 of the *Introductory Act to the Civil Code* at that time, the capacity to marry should be determined according to the law of the person’s home country. The German local law, therefore, pointed to the man’s national law based on conflict rules. However, the Spanish law at the time, as it did not recognize the divorce decree, refused to issue the necessary documents regarding the woman’s capacity to marry, refusing to exempt her from the requirement for proof of marriageability. Due to the lack of the required documentation for marriageability, the German local authorities rejected the registration request for marriage between the Spanish man and the German woman. Ultimately, the parties filed a constitutional complaint with the Federal Constitutional Court of Germany, and the court supported the marriage request. The main reasoning of the Federal Constitutional Court of Germany was as follows: According to Article 6 of the *Basic Law of the Federal Republic of Germany*, basic rights protect everyone, including foreigners, in their freedom to marry a partner of their choice (freedom to marry). The freedom to marry is also a fundamental right in the *Universal Declaration of Human Rights* and the *European Convention on Human Rights*, equally protected for all individuals. The application of German private international law norms and the foreign law they point to in a specific case must undergo a review of basic rights. If the complainant argues that the application of foreign law indicated by German conflict law would infringe upon their freedom to marry, the constitutional review mentioned above must be conducted. In the specific constitutional complaint, the issue was that the home country law of a foreigner did not recognize divorce. Therefore, the German registration authorities and courts refused to acknowledge the marriage between the foreigner and the German as not complying with Article 6(1) of the *Basic Law*. Quote from Wang Baoqu, “Translation and Commentary on the German Federal Constitutional Court’s Jurisprudence on the Effectiveness of Constitutional Basic Rights on Private International Law,” *Jahrbuch des Deutsch-Chinesischen Instituts für Rechtswissenschaft der Universitäten Göttingen und Nanjing* 10 (2013): 283-294.

the outcome of the application of foreign law not contradict the basic rights outlined in the constitutional framework of the court's jurisdiction, but also the conflict rules themselves must not conflict with the basic rights enshrined in the constitutional framework of the court's jurisdiction. Consequently, within the European Community, many countries interpret the content of the *European Convention on Human Rights* as a reflection of the human rights protection within their own constitutions to ensure the efficacy of the *Convention*. Additionally, in the United States, the legitimacy and rationality of legal application are primarily scrutinized through the constitutional principle of "due process." The conditions for the application of the "due process" clause in the choice of law are as follows: the chosen law in international cases must be closely related to the legal facts and the parties involved, possess a legitimate government interest analysis in terms of legal application, and align with the laws of the state within the reasonable expectations of all parties involved. Otherwise, the outcome of the legal choice may be deemed "arbitrary," "fundamentally unjust" to the parties, and in conflict with the "due process" clause of the federal constitution.²⁴ Italy, similar to Germany, intervenes in legal choices through constitutional means, employing a system of subsequent case review to rectify elements in private international law practices that conflict with fundamental constitutional rights. The fundamental objective of constitutional intervention in legal choices in these countries is to protect basic rights, with differences existing mainly in the specific forms and emphases of the interventions. In other words, there is no standardized template for overseeing the realization of constitutional basic rights such as personal dignity in specific judicial cases, and the approach should be determined based on the actual situation in each country. In China, the current primary mechanism is the regulatory review system established by the legislative affairs Commission of the Standing Committee of the National People's Congress.

B. The impact of human rights protection on legislation and practice of private international law in the field of cross-border personality rights infringement

With the rise of humanism, there has been a certain degree of change or adjustment in the value neutrality of traditional connecting factors of conflict rules in order to promote the effectiveness of international civil and commercial legal relations and protect the rights of the vulnerable groups. In the field of personality rights infringement, multilateral conflict rules are applied to achieve substantive justice in the application of law, meeting the demands of humanitarian care. In response to this, most European countries have introduced protective conflict rules and selective conflict rules in the legislative domain of cross-border personality rights and tort conflict laws, which empower the victim with the autonomy to unilaterally express their intent in legal choices or establish the most significant relationship principle as a policy-oriented fallback method for legal choices. Protective conflict norms, aiming to achieve the protection of specific groups' rights, often manifest as the application of laws most favorable to vulnerable groups. In such cases, connecting factors carry a val-

24. Liu Renshan and Su Yantao, "Human Rights Protection in Legal Choice: A Comparative Study Based on Judicial Practices in Two Major Legal Systems," *Studies in Law and Business* 2 (2007): 125.

ue-oriented focus on safeguarding particular parties. On the surface, this may seem to contradict the equality principle in private international law. However, this is not the case. Equality is evident not only in formal terms but, more importantly, in substantive terms. Protective conflict norms precisely embody substantive equality in private international law.²⁵ Furthermore, to enhance the effectiveness of cross-border civil and commercial legal actions and adapt to the needs to protect the rights of the parties involved, countries have expanded the connecting factors of nationality or residence in the personal law of natural persons to habitual residence. This shift helps avoid the rigidity in legal choices. In other words, what was once neutral and mechanical conflict norms have gradually incorporated the value of protecting the rights of the vulnerable groups into legal choice rules or methods. This integration can further achieve both formal and substantive justice in the outcomes of case processing, thereby enhancing the appropriateness and rationality of legal choices.²⁶ Therefore, the fundamental essence of human rights norms in the legislation of cross-border personality rights and tort conflict laws lies primarily in the role of shaping values.

The principle of party autonomy in private international law refers to the right of the parties to freely determine the law applicable to their disputes. The philosophical foundation of the principle stems from the natural law school's concept of inherent human rights, emphasizing a greater inclination to respect and protect the parties' intentions. It is rooted in the idea that individuals are the best judges of their interests. Each person is the most aware of their own needs, and the judgments and choices of others cannot substitute for an individual's decision-making after weighing their interests.²⁷ Therefore, as Kant said, a person is most suitable for obeying the laws that he has laid down, either those prescribed individually for him or those established jointly with others.²⁸ In this regard, to ensure the protection of individual dignity and rights, it is necessary to allow individuals the right to autonomously determine and handle matters concerning their interests in public life. This involves granting individuals the right to choose the applicable law. It is precisely in this sense that legislation in European continental legal systems, such as Switzerland, Montenegro, Belgium, and others, concerning conflict norms in personality rights infringement, permits victims to choose the applicable law for their cases from multiple connecting factors.²⁹ From this, it can be clearly inferred that the legislators aim to uphold, promote, or achieve

25. Xu Weigong, *Study on the Implementation of the Law of Application of Foreign-related Civil Relations* (Beijing: Legal Press China, 2019), 81.

26. He Yehua, "The Interaction Between Human Rights Norms and Private International Law," *Social Sciences in Guangxi* 12 (2019): 129.

27. Hu Yuhong, "Respect, Decency, Equality: Dignity in Xi Jinping Thought on the Rule of Law," *Oriental Law* 4 (2022): 7.

28. Immanuel Kant, *The Philosophy of Law: An Exposition of The Fundamental Principles of Jurisprudence as the Science of Right*, translated by Shen Shuping (Beijing: The Commercial Press, 1991), 26 and 50.

29. Article 139 of the *Swiss Federal Code on Private International Law* (2017 revision). Article 55 of the *International Private Law Act of Montenegro* (implemented in 2013). Paragraph 2, Article 99 of the *Belgian Codification of Private International Law* (implemented in 2004). Article 35 of the *Turkish Act on International Private and Procedure Law* (1) (Act No.5718 revised in 2007). See Zou Guoyong translated and annotated, *Translation of Foreign Private International Law Legislation* (Wuhan: Wuhan University Press, 2017), 296, 354 and 380.

specific substantive outcomes. That is, to protect the weaker party's personality rights from the adverse consequences of unilateral conflict rules and enhance the effectiveness and rationality of legal application.

The principle of the most significant relationship in private international law refers to the judge, in handling certain types of cross-border civil and commercial cases, applying the law that has the most significant connection to the facts of the case or the parties involved. This principle serves as a crucial measure, especially in the field of tort, to overcome the rigidity of legal choices and achieve substantive justice. Some scholars argue that the principle of the most significant relationship is an inheritance and development of Savigny's theory of "the seat of legal relationship" (*Sitz des Rechtsverhältnisses*). In determining which law has the most significant relationship to the facts of the case or the parties involved, the interests of the sovereign state are no longer the sole determining criterion. The protection of the individual rights and interests of the parties involved gradually becomes a more important balancing factor.^{30,31} Among them, a landmark case is the *Babcock v. Jackson* case heard by the New York Appellate Division in 1963.³¹ The case involved personal injuries resulting from a traffic accident. If the traditional approach of applying the law of the place where the tort occurred, i.e., the law of Ontario, were followed, the plaintiff's claim for compensation would not have been supported. However, the New York Court of Appeals successfully applied the principle of the most significant relationship, overturning the application of Ontario law that should have been applicable and instead applying the law of New York, which had the most significant relationship. This resulted in the protection of the plaintiff's rights. At this point, the emphasis on safeguarding individual interests has become a significant consideration in legal choices, reflecting a pursuit of substantive justice outcomes. Subsequently, in the 1970s, the principle of the most significant relationship was formally introduced by American scholar Willis Reese in the *Restatement, Second, Conflict of Laws*, a compilation in the United States. Section 153³² of this law stipulates that the rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties, and this principle was later widely accepted on the European continent.³³ The principle of the most significant relationship advocated by Reese incorporates considerations of sub-

30. Du Tao and Xiao Yongping, "China's Civil Code in the Era of Globalization: Beyond the Territoriality Principle," *Law and Social Development* 3 (2017).

31. *Babcock v. Jackson*, 12N.Y.2d473, 240N.Y.S.2d743, 191N.E.2d279 (1963).

32. Section 153 of the U.S. *Restatement, Second, Conflict of Laws* provides that for interstate torts of privacy arising from the content of a publication in any edition of a book or newspaper, any broadcast by a radio or television station, any exhibition of a film, or similar one-time transmissions that invade the plaintiff's privacy rights, the rights and obligations are governed by the law of the state with which the event and the parties have the most significant relationship, following the principles set forth in Section 6. If the accused content is published in the state where the plaintiff resides, that state is typically considered the state with the most significant relationship. See *Restatement, Second, Conflict of laws*, page VII and IX.

33. For instance, paragraph 2, Article 48 of the *Austrian Private International Law Act* (2015 revision) regarding claims for non-contractual damages states: If the parties have not made an effective choice of law regarding such non-contractual liability, the law of the country where the harmful act occurred shall apply. However, if all parties involved have a more significant relationship to the law of another (Continued on Next Page)

stantive justice, contributing to the formulation of substantive legal choice methods in personality rights and tort conflict laws. However, it is essential to note that this substantive legal choice approach, emphasizing substantive justice, does not entirely replace traditional rules-based legal choice methods. There is still a risk of judicial abuse of discretion in the application of substantive legal choice methods. Therefore, the contemporary trend in the development of private international law is to integrate both approaches, achieving a dynamic balance between conflict justice and substantive justice.

C. The impact of directly applicable law on the legal application system of cross-border personality rights infringement

The theory of “Directly Applicable Law” in private international law typically refers to a system where certain mandatory legal provisions in domestic law are directly applicable based on a unilateral approach. Currently, such special unilateral approaches are widely reflected in private international law in various countries. For instance, in the *Civil Code of the Russian Federation* (2014 revision), Article 1192 specifies that mandatory norms of special significance, such as those protecting the rights of participants in civil turnover relationships, are directly applicable without being influenced by other applicable laws.³⁴ In another case, Article 18 of the *Swiss Federal Code on Private International Law* (2017 revision) stipulates that “This Code does not prevent the application of those mandatory provisions of Swiss law which, by reason of their particular purpose, are applicable regardless of the law designated by this Code.”³⁵ In China, Article 4³⁶ of the *Law of the Application of Law for Foreign-related Civil Relations in the People’s Republic of China* (hereinafter referred to as the *Law of the Application of Law*) and Article 8³⁷ of the *Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of the Law of the People’s Republic of China on the Application of Foreign-related Civil Relations (I)* (hereinafter referred to as the *Judicial Interpretation I*) explicitly stipulate that if there are mandatory pro-

(Continued) country, then the law of that other country shall prevail. Article 41 of the *German Introductory Act to the Civil Code* (2017 revision) also establishes the principle of the most significant relationship as the primary principle for determining the applicable law in non-contractual obligations. See Zou Guoyong translated and annotated, *Translation of Foreign Private International Law Legislation* (Wuhan: Wuhan University Press, 2017), 163 and 119.

34. Zou Guoyong, *Translation of Foreign Private International Law Legislation* (Wuhan: Wuhan University Press, 2017), 94.

35. *Ibid.*, 380.

36. Article 4 of the *Law of the Application of Law for Foreign-related Civil Relations in the People’s Republic of China*: “If there are mandatory provisions on foreign-related civil relations in the laws of the People’s Republic of China, these mandatory provisions shall directly apply.”

37. In 2020, Article 8 of the *Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of the Law of the People’s Republic of China on the Application of Foreign-related Civil Relations (I)* stipulates that, “If any of the following circumstances involving the social public interests of the People’s Republic of China applies, and the parties cannot exclude their application through agreement, the laws, and administrative regulations governing foreign-related civil relationships shall be directly applied without the need for conflict rules guidance, and the people’s courts shall recognize them as mandatory provisions as stipulated in Article 4 of the *Law on the Application of Law to Foreign-related Civil Relations*: (1) Involving the protection of laborers’ rights and interests; (2) Involving food or public health safety; (3) Involving environmental safety; (4) Involving financial security such as foreign exchange control; (5) Involving anti-monopoly and anti-dumping; (6) Other circumstances that should be deemed mandatory provisions.”

visions in Chinese law, these mandatory provisions shall be directly applicable. After listing the scope of application of mandatory legal provisions in five specific areas, such as the protection of workers' rights, they also make fallback provisions. In this regard, Article 62³⁸ of the *Law on the Protection of Disabled Persons of the People's Republic of China* (2018 Amendment), Articles 20,³⁹ 28,⁴⁰ and 29⁴¹ of the *Law on the Protection of Women's Rights and Interests of the People's Republic of China* (2022 revision), Articles 4,⁴² 72,⁴³ 73⁴⁴ of the *Law on the Protection of Minors of the People's Republic of China* (2020 revision), etc. directly stipulate the content of personality rights protection, such as the rights to reputation, honor, privacy, image, personal information, etc., for disabled individuals, women, and minors. If the fallback clauses within the aforementioned unilateral approaches are followed, it provides the courts with significant discretionary space to directly apply the protection provisions for the personality rights of persons with disabilities, women, and minors when handling cross-border personality rights infringement cases. However, some scholars argue that the application of mandatory legal provisions in international civil and commercial legal relationships is a specific requirement under universalism and should be limited in scope.⁴⁵ While this perspective has its merits, it is important to note that laws are

38. Article 62 of the *Law on the Protection of Disabled Persons of the People's Republic of China* (2018 Amendment): "Where anyone, in violation of this Law, derogates the personal dignity of a person with disabilities through mass media or by other means, the cultural, radio and television, and film, press and publication or any other relevant competent authority shall, according to its functions, order correction, and impose an administrative punishment on the violator."
39. Article 20 of the *Law on the Protection of Women's Rights and Interests of the People's Republic of China* (2022 revision): "The personal dignity of women shall be inviolable. It is prohibited to injure women's reputation or personal dignity by insult, slander, etc."
40. Article 28 of the *Law on the Protection of Women's Rights and Interests of the People's Republic of China* (2022 revision): "The rights of name, likeness, reputation, honor, privacy, personal information, and other personality rights and interests of women shall be protected by law.
The media shall report events involving women objectively and appropriately, and shall not violate the personality rights and interests of women by exaggerating facts, embroidering the truth, or any other means.
It is prohibited to debase or injure women's personal dignity by public media or otherwise. Without a woman's own permission, it is prohibited to use her portrait in advertisements, trademarks, window display, newspapers, periodicals, books, audio and video recordings, electronic publications, Internet, etc., unless otherwise stipulated by law."
41. Article 29 of the *Law on the Protection of Women's Rights and Interests of the People's Republic of China* (2022 revision): "Badgering and harassing a woman, or divulging and disseminating the privacy and personal information of the woman, under the pretext of a romantic or friendship relationship, or after termination of a romantic relationship or divorce shall be prohibited."
42. Article 4 of the *Law on the Protection of Minors of the People's Republic of China* (2020 revision): "Minors shall be protected under the principle that is most beneficial to minors. The handling of matters involving minors shall satisfy the following requirements: (1) Offering special and preferential protection to minors. (2) Respecting the personal dignity of minors. (3) Protecting the privacy of and personal information on minors."
43. Article 72 of the *Law on the Protection of Minors of the People's Republic of China* (2020 revision): "Information processors that handle the personal information on minors through the Internet shall follow the principles of legitimacy, fairness and necessity. To process the personal information on minors under the age of 14, the consent of minor's parents or other guardians shall be obtained, unless as otherwise prescribed by laws and administrative regulations."
44. Article 73 of the *Law on the Protection of Minors of the People's Republic of China* (2020 revision): "Network service providers finding that minors issue private information on the Internet shall give reminders in a timely manner and take necessary protective measures."
45. Shen Juan, "Re-understanding of the Applicable System of Mandatory Provisions," *Chinese Review of International Law* 6 (2020): 86.

not made precisely in a closed system to address future uncertainties. Therefore, the theory of “Directly Applicable Law” is a measure by states to intervene in international civil and commercial activities to protect domestic special interests. It also leaves room for the protection of cross-border personality rights of special groups, such as persons with disabilities, women, and minors. Some scholars in China have even proposed that “laws protecting the vulnerable groups should become directly applicable laws.”⁴⁶

D. The impact of the public order reservation system on the legal application of cross-border personality rights infringement

Modern private international law is gradually incorporating the protection of basic rights as a balancing factor in the traditional public order, giving it a “safety valve” function. In detail, this means that when the choice of applicable law or the chosen law through party autonomy in international civil and commercial cases goes against the basic rights values prioritized by the forum state, the application of such laws may be excluded, or international judicial assistance may be refused. For instance, in the *Introductory Act to the Civil Code* (2017 revision) in Germany, Section 6 of Chapter 2 (Private International Law) stipulates that the application of foreign laws violating basic rights shall be excluded.⁴⁷ Of course, it is worth noting that the academic community generally agrees that not every private international law case needs to undergo a human rights protection value review through the public order reservation system.

E. The impact of international human rights treaties on the legal application of cross-border personality rights infringement

The judicial application of international human rights treaties generally refers to the judicial activities of a court in dealing with specific foreign-related cases based on the international human rights treaties that the country has ratified. Practices regarding whether domestic courts can directly apply international human rights treaties vary in different countries. Taking the *International Covenant on Civil and Political Rights* as an example, countries such as Japan, Germany, France, Chile, etc., allow direct application, while other countries require transformation or legislative implementation.⁴⁸ In China, due to the lack of explicit provisions in the *Constitution* regarding the status of international human rights treaties in the domestic legal system, and considering that Article 7 of the “Judicial Interpretation (I)” only addresses the application of international treaties in the field of cross-border contracts, coupled with the fact that the content specified in international human rights treaties is largely declarative in international law, there has been ongoing debate in China about whether domestic courts can directly apply international human rights treaties in judicial practice. While the mainstream opinion in academia believes that courts cannot directly apply internation-

46. Qu Guangqing, “Private International Law Methods Protecting Vulnerable Groups and Its Legislation Improvement — With a Focus on Conflict Norms Protection,” *Studies in Law and Business* 5 (2006): 47.

47. Article 4 of the *Law of the Application of Law for Foreign-related Civil Relations in the People's Republic of China*, 110.

48. Wan Exiang, *Research on the Relationship Between International Law and Domestic Law: A Perspective on the Application of International Law in Domestic Contexts* (Beijing: Peking University Press, 2011), 262.

al human rights treaties or that these treaties must be transformed into domestic law before direct application, empirical research indicates that in recent years, Chinese courts have cited cases reasoning with international human rights treaties such as the *Convention on the Rights of Persons with Disabilities*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, and the *International Covenant on Civil and Political Rights*.⁴⁹ The application process of these international human rights treaties generally involves courts citing and reasoning with the treaties in their judgments or using them as a basis for judgment. It also includes situations where courts respond to the appropriateness of the parties invoking human rights treaties after making judgments.⁵⁰ In practice, a significant majority of cases involve parties actively invoking human rights treaties to enhance persuasiveness. Cases where courts directly cite international treaties as the basis for judgments are relatively uncommon. Chinese courts often adopt an indirect application approach by interpreting domestic laws consistently with the provisions of international human rights treaties or indirectly applying the treaties by transforming them into domestic laws. There is no unified judicial mechanism for the direct application of international human rights treaties. As an example of a specific case involving the application of international human rights treaties to personality rights disputes, we can consider the case of plaintiff Guan Xin suing defendant Beijing Lose Weight Era Science and Technology Co., Ltd. for the right to equal employment.⁵¹ In the case, the plaintiff argued that the defendant's actions, including marginalizing the plaintiff during pregnancy to force her resignation, constituted gender discrimination in employment, violating the personal dignity and equal employment rights of female workers during childbirth. The plaintiff submitted legal expert opinions to the court, asserting that the defendant had violated the provisions of the *Convention on the Elimination of All Forms of Discrimination Against Women* and the *International Labour Organization Discrimination (Employment and Occupation) Convention of 1958*. The first-instance court considered that the academic community views international conventions as one of the legal sources, drawing an analogy to intellectual property courts citing conventions as a basis for judgments. Referring to the *Convention on the Elimination of All Forms of Discrimination Against Women* in the context of human rights protection aligns with basic legal principles and helps address existing legal gaps. However, the second-instance court did not directly respond to the parties' invocation of human rights conventions. Instead, it based its judgment on Article 3 of the *Employment Promotion Law of the People's Republic of China*, which prohibits gender discrimination in employment. It is evident that due to various objective and personal factors, different judges are influenced differently,

49. The case database is sourced from Alpha. By entering keywords "human rights," "convention," and "personality" with spaces between each keyword in the search box, there were 40 cases retrieved. Continuing to filter for personality rights disputes in the cause of action field on the search interface revealed 16 cases involving the infringement of personality rights that invoked international human rights conventions. The data may be influenced by the choice of search keywords, but it serves to confirm the application of international human rights treaties in cases related to personality rights. The retrieval cutoff date was September 5, 2022.

50. Dai Ruijun, "Judicial Application of International Human Rights Treaties in China," *The Journal of Human Rights* 1 (2020): 135-137.

51. Beijing Third Intermediate People's Court (2021) Beijing 03 Case No.6702 Final Civil Judgment.

leading to variations in their understanding and application of international treaties.⁵²

III. The Conflict and Coordination of Human Rights Protection in the Development of Cross-border Personality Rights and Tort Conflict Laws

With the diverse development of human rights protection worldwide, the boundaries of various rights may overlap, leading to varying degrees of conflict in the underlying values of human rights protection.⁵³ As artificial intelligence technology and the digital industry increasingly integrate into people's daily lives, new types of personality rights, such as personal information, are on the rise. The scope of rights, including privacy and freedom of speech, is gradually expanding. The conflicts in human rights values among various countries will also manifest in specific issues of conflicting rights, or one might say, the root of rights conflict lies in value conflicts.⁵⁴ In conflicts of rights, however, the value of different rights is not equal. Therefore, according to Edgar Bodenheimer, a hierarchy of rights exists, meaning that different rights have a certain order of precedence.⁵⁵ Therefore, rights such as the right to life, bodily integrity, and health in personality rights should take precedence over other rights in protection, and the hierarchy of rights is also an important manifestation of substantive justice.

A. Conflict of human rights values in different countries

The connotation of human rights values will change with the variations in economic, political, historical, social, religious, and other factors where they are rooted. Different groups, influenced by their conditions and the changing environment, place varying emphasis on the understanding of human rights values.⁵⁶ Marx believed that rights could never surpass the economic structure of society and that the cultural development of society is constrained by the economic structure.⁵⁷ Correspondingly, General Secretary Xi Jinping has also pointed out that human rights are historical, specific, and realistic and cannot be discussed in isolation from the socio-political conditions and historical civilization traditions of different countries' developmental stages.⁵⁸ In response, Professor Lu Guangjin proposed that China has always adhered to the path of "protecting and promoting human rights in development" and the hu-

52. Du Huanfang, "The Path Dependence and the Methods Development of Interpreting International Private Law Treaties," *China Legal Science* 2 (2014): 255.

53. Cheng Liaoyuan and Wang Renbo, *Winning the Sacred: A Treatise on Rights and Their Remedies* (Jinan: Shandong People's Publishing House, 1998), 228.

54. Ma Te, "The Collision of the Rights about the Right of Privacy," *Legal Forum* 1 (2006): 26.

55. Edgar Bodenheimer, *Jurisprudence: The Philosophy and Method of the Law*, translated by Deng Zhenglai (Beijing: China University of Political Science and Law Press, 1999), 400.

56. Cui Xiaotao, "Fragmentation of Contemporary American Values on Human Rights and the Impact," *The Journal of Human Rights* 1 (2022): 177-182.

57. Central Compilation and Translation Bureau, *Selected Works of Marx and Engels, vol. 3* (Beijing: People's Publishing House, 2012), 364.

58. Xinhua News Agency, "Xi Jinping Emphasizes Unwavering Commitment to Follow China's Path of Human Rights Development and Better Promote the Progress of China's Human Rights Cause during the 37th Group Study Session of the Central Political Bureau," *People's Daily*, February 27, 2022, page 1.

man rights development concept centered on the people, which is different from the internationally proposed “human rights-based development path.”⁵⁹

The right to life, bodily integrity, health, privacy, personal freedom interest, personal information interest, and other similar aspects constitute essential components of personality rights in China. During the severe impact of the COVID-19 pandemic on these basic rights of individuals, the differing attitudes and conflicts in human rights values can be observed by examining how various countries protected the rights to life, bodily integrity, health, personal freedom interest, and personal information interest in their approaches to epidemic prevention. In China, during the COVID-19 pandemic prevention and control process, measures such as static management and home quarantine in high-risk cities or specific regions were implemented. These measures were guided by the principles of putting the people first, prioritizing life and maximizing the protection of people’s lives and physical health.⁶⁰ In contrast, during the COVID-19 pandemic, some Western countries posed greater threats to the overall livelihoods and the rights to life and health of their populations. It can be observed that China, valuing the collective survival rights of its people, prioritized the well-being of the entire population and demonstrated a greater emphasis on guaranteeing economic, social, and cultural rights, as well as protecting the rights of vulnerable groups. Individual rights and freedoms are relative, and individuals have an obligation to collectively safeguard societal public interests in specific situations. In Western countries, the influence of an absolute individualistic human rights perspective is profound. They tend to overly emphasize individual rights without placing a strong emphasis on individual social responsibilities. In such societies, human rights are often viewed solely as limitations on state power, with less emphasis on the corresponding social obligations of individuals.⁶¹

In conclusion, the protection of rights is crucial in handling foreign-related civil and commercial disputes, especially requiring careful consideration of the specific circumstances of each case to contribute to the effective protection of rights in the context of legal choices.

B. The conflict between specific personality rights and freedom of speech

The exercising of personality rights and their protection often conflict with other interests and values, and the differing priorities in the protection of rights in various countries can lead one party to choose laws that favor their interests, sometimes resulting in the infringement of the legitimate rights of the other party. For instance, conflicts arise in the use of others’ portraits or personal information in news reporting, where the exercise and protection of portrait rights and privacy rights may clash with public scrutiny. Similarly, conflicts exist between the protection of privacy rights and personal information interests and the control of personal information and data by

59. Lu Guangjin, “China’s ‘Development-Based Human Rights Path’: What Sets It Apart?” (May 21, 2022), CNS, accessed September 9, 2023, <https://m.chinanews.com/wap/detail/chs/zwsp/9760384.shtml>.

60. See note 5.

61. Li Lei and Teng Rui, “Comparison of Human Rights Values Between the East and the West — Summary of the 2019 China-Europe Seminar on Human Rights,” *The Journal of Human Rights* 5 (2019): 146.

entities. Among these conflicts, the conflicts between various personality rights and freedom of speech are particularly evident.

Freedom of speech is considered a fundamental right both in international human rights conventions and in the constitutions of various countries, while personal dignity is also a constitutional right parallel to freedom of speech. When these two basic rights come into conflict in practice, the key is to determine the boundaries between them. Internationally, Article 10 of the *European Convention on Human Rights* emphasizes the right of everyone to freedom of expression but is subject to constraints for the protection of national security, territorial integrity, public safety interests, and the rights of others' reputation. In the practice of adjudicating foreign-related civil and commercial cases in China, a search reveals that conflicts between personality rights and freedom of speech often manifest when one party claims that statements made by the other party on the internet infringe upon their right to reputation, privacy, portrait, or personal information. The other party may counter argue that their freedom of speech is protected and, therefore, they should not be held liable for infringement. The court's approach to the limitation of freedom of speech can be mainly categorized into two types. The first type, exemplified by the defamation case of Meng Fei v. Gao Yan and Nanjing Jam Culture Development Co., Ltd.⁶², is based on conflict rules directing the application of substantive law in China. In this type, the court holds that individuals publishing statements online have a duty to exercise reasonable care and must not infringe upon the legitimate rights of others through the exercise of freedom of speech. Otherwise, such online statements would constitute harm to the reputation rights of others. The second type, illustrated by the defamation case of China Overseas Property Management Co., Ltd. Shenzhen Branch v. The Sixth Owners' Committee of Gonghe Shijia in Futian District, Shenzhen⁶³, involves the court's view that the defendant's expressions in activities such as news reporting and public opinion supervision are relatively objective, with clear sources and lacking insulting evaluations. The court holds that as a provider of property services, the plaintiff should tolerate criticism, suggestions, comments, and supervision from the property service recipient (defendant) within a certain range. Therefore, it is difficult to establish clear subjective malice on the part of the defendant in fabricating facts, intentionally defaming, or harming the plaintiff's personality and reputation. In fact, Articles 999, 1025, 1026, and 1035 of China's *Civil Code* establish a balanced relationship between personality rights and interests, such as the right to reputation, the right to one's name, the right to portrait, the right to personal information, and the freedom of speech in news reporting and public opinion supervision. The limitation on freedom of speech is set in cases of public interest, provided there is no fabrication or distortion of facts, and reasonable examination of significant false content provided by others is not neglected. Academic research on the limitation of freedom of speech is abundant, as seen in Professor Zuo Yilu's study on the transformation of freedom of speech in the United States. He discovered that many contemporary issues related to freedom of speech are no lon-

62. Jiangsu Nanjing Intermediate People's Court (2018) Jiangsu 01 Case No.4780 Final Civil Judgment.

63. Guangdong Shenzhen Futian People's Court (2019) Guangdong 0304 Case No.48844 First Instance Civil Judgment.

ger purely about freedom; the introduction of the value of “equality” into freedom of speech necessarily involves balancing freedom and equality.⁶⁴ In other words, incorporating the value of equality into freedom of speech means that laws and policies must lean towards addressing freedom of speech issues, for example, by restricting hate speech based on race, color, gender, religion, or other factors to avoid discrimination against personal dignity of vulnerable groups.

While domestic laws in China carefully coordinate personality rights and freedom of speech, when it comes to the field of cross-border personality rights and tort conflict laws, Chinese laws only provide the “habitual residence of the injured party” as the sole connecting factor, which overlooks the issue of balancing substantive rights. In domestic law, Chinese citizens may justify their comments on a foreign enterprise based on public interest or public supervision. However, if, according to the conflict rule specified in Article 46 of the *Law of the Application of Law*, the designated foreign law does not provide for the right of the Chinese party to raise the aforementioned justifications in defense, it clearly conflicts with the values of Chinese substantive law. In contrast, while European states have previously struggled to reach a consensus on the policy balance between protecting personality rights and safeguarding freedom of speech,⁶⁵ an examination of the private international law legislation in some EU countries reveals that they have granted infringers a certain right to a reasonable defense in the policy balance between protecting personality rights and ensuring freedom of speech. For instance, Article 139 of the *Swiss Federal Code on Private International Law* (2017 revision) stipulates that in cases of media or online infringement of another person’s personality rights, the premise for the application of the law chosen by the victim is that the tortfeasor should have foreseen that the consequences would occur in Switzerland. Therefore, China’s current personality rights and tort conflict laws, which only apply based on the habitual residence of the victim, with the single connecting factor pointing to the applicable law in a case, are bound to fail in balancing the conflicting values behind various rights.

C. Coordinating conflicts between personality rights and other basic rights, including freedom of speech

In the substantive law of personality rights, scholars have proposed establishing a hierarchy to determine the priority of rights or values. Perhaps, by doing so, it could

64. Zuo Yilu, “From Liberty to Equality: The Modern Transition of American Freedom of Speech,” *Journal of Comparative Law* 1 (2021): 152.

65. In June 2003, the European Commission proposed a *Draft Proposal for a Regulation of the European Parliament and the Council on the Law Applicable to Non-Contractual Obligations*, suggesting that the principle for personality rights infringement should generally be the law of the place where the harm occurred. The aim of this proposal was to strengthen the protection of the victim’s personality rights. However, due to significant differences among member countries, this proposal was not accepted. Subsequently, in 2005, the European Parliament adopted a legislative resolution on this proposal, emphasizing the protection of media professionals and advocating for the “law of the place of the harmful event” as the primary factor. However, in 2007, Article 1 of *Rome II Regulation* explicitly excluded non-contractual obligations arising from privacy infringement, personality rights violations, and defamation, resulting in a lack of unified personality rights and tort conflict laws in the European Union to this day. See Huang Zhihui, “Judicial Coordination Concerning Application of Law Problems on International Infringement of Personality Rights: From EU to China,” *Tribune of Political Science and Law* 2 (2015): 105.

be possible to legally balance the conflicts between the protection of personality rights and other rights effectively.⁶⁶ This also has instructive significance for addressing the value judgment of public interest preservation in conflict law. German jurist Karl Larenz pointed out that when rights come into conflict, one important means of coordinating such conflicts is to assign a norm a position of priority clearly.⁶⁷ Professor Wang Liming believes that exploring the hierarchy of civil rights means, under the guidance of the principle of equality, prioritizing the protection order of certain rights while appropriately reducing or placing reasonable constraints on other rights.⁶⁸ Kwon Young Seong, a South Korean scholar, also proposes that the right to life and spiritual personality rights should be prioritized in protection over other basic rights.⁶⁹ Professor Wang Xigen believes that due to the right to life, bodily rights, and health rights in personality rights being the most basic human rights, if a person lacks the existence of life, other human rights cannot be discussed. The rights such as the right to one's name, portrait, reputation, and honor in personality rights are fundamental for individuals to maintain a dignified life. Personal privacy and the security of private information are also basic rights to ensure people's peaceful living. Therefore, personality rights form the foundation and prerequisite for all human rights.⁷⁰ These statements demonstrate that the principle of the hierarchy of rights plays a crucial role in making legal value judgments, assisting judicial authorities in balancing interests, reconciling conflicts of rights and values, and other aspects. Therefore, when personality rights protection conflicts with the protection of other rights and interests, determining the high rank of personality rights based on the humanistic philosophy and prioritizing their protection has a certain legitimacy and rationality. This approach aligns with the requirement of Article 38 of the *Constitution* to "safeguard human dignity". Certainly, in substantive law, preemptively and precisely ranking various specific civil rights in all scenarios is not an easy task. Sometimes, rights with a higher rank only have relative priority and are not exempt from any limitations.⁷¹ In this regard, one should seek the legislator's intent, that is, to explore the legislator's value choices regarding the hierarchy of relevant rights. Indeed, the scholars mentioned above are interpreting the basic hierarchy of rights established by substantive law. However, in contemporary private international law, the value judgment of public interests also tends to follow substantive principles.

Some scholars also argue that to alleviate conflicts between different private law rights, it is possible to clarify the limits of the duty of tolerance of the right holder by

66. Wang Liming, "Highlight and Innovation of the Part of Improvement Rights in the Civil Code," *China Legal Science* 4 (2020): 14.

67. Karl Larenz, *Methodenlehre der Rechtswissenschaft*, translated by Huang Jiazhen (Beijing: The Commercial Press, 2020), 421.

68. Wang Liming, "On the Rank of Civil Rights and Interests: With the Civil Code as the Centre," *China Legal Science* 1 (2022): 34-40.

69. Kwon Young Seong, "The Competition and Conflict of Basic Rights," translated by Han Dayuan, *Global Law Review* 4 (1996): 76-82.

70. Wang Xigen, "On the Spirit of Human Rights in the Civil Code of the People's Republic of China: Focusing on Its Compilation of Personality Rights," *The Jurist* 2 (2021): 4.

71. Liang Yingxiu, "Judicial Solutions to Conflicts of Rights," *Chinese Journal of Law* 2 (2014): 68-69.

applying the principle of proportionality to a limited extent. This approach can both uphold the freedom of action of the actor and enhance the legitimacy and acceptability of regulation.⁷² In fact, European countries incorporate limited party autonomy principles in personality rights and tort conflict laws by corresponding to the principles of proportionality, which means that the legal rights chosen by the parties are not unlimited; they must be based on the premise that the tortfeasor knew that the harm occurred in the country where the victim chose the law. Because rights are not absolute, their exercise has boundaries and cannot exceed necessary limits. This fact implies that the means of exercising rights must consider legitimate purposes, appropriateness, and necessity. Moreover, in the regulation of social media platforms and the balance with freedom of speech, the principle of proportionality acknowledges the diversity of interests and values, making remedies more flexible.⁷³ When individual rights, public interests, and various other interests conflict, employing the balanced path of the proportionality principle to make corresponding judgments and trade-offs can lead to relatively fair and reasonable outcomes in the balancing of interests.

IV. Legislative Prospects for Human Rights Protection in China's Development of Cross-border Personality Rights and Tort Conflict Laws

In recent years, China's substantive laws, including the *Civil Code* and the *Personal Information Protection Law*, have established a relatively sound protection mechanism for personality rights. However, the effectiveness of protecting the rights of individuals in cross-border personality rights and tort conflict laws still needs further coordination. Through searches on China Judgments Online, it has been found that since the implementation of the *Law of the Application of Law* in China, there have been 78 cases of disputes involving infringement of non-material personality rights heard in various levels of people's courts among cross-border personality rights infringement cases.⁷⁴ Among them, 54 cases have applied the general tort conflict rules under Article 44 of the *Law of the Application of Law* in the reasoning process of legal choice, ignoring or abandoning the provisions of Article 46 related to personality rights and tort conflict laws. This practice not only contradicts the principle that special rules prevail over general rules but also deviates from the legislative intention of separately specifying conflict rules for Internet cross-border personality rights infringement to emphasize the principle of protecting the interests of the weaker party, which has led to doubts about the legitimacy of the expanded application of Article

72. Liu Quan, "The Application of Proportionality Principle: Controversies and Reflections," *Journal of Comparative Law* 5 (2021): 181.

73. Zuo Yilu, "The Publicness and Regulation of Social Platform: American Experience and Lesson," *Tsinghua University Law Journal* 4 (2022): 111.

74. The author conducted searches on China Judgements Online and Alpha Legal Case Database, specifically targeting cases involving the Internet cross-border infringement of personality rights that are applicable to Articles 44, 46, 3, and 15 of the *Law of the Application of Law*. After excluding cases related to substantive personality rights disputes, such as the right to life and health, as well as judgments not involving online, news media, and other infringement methods, and further excluding cases with repeated legal provisions or those that underwent repeated appeals, the author identified a total of 78 cases related to disputes over non-material personality rights as of September 5, 2022.

44. The above practices indicate that Article 46 of the *Law of the Application of Law*, concerning personality rights and tort conflict rules, exhibits a certain degree of rigidity and singularity, making it unable to meet the practical needs of maximizing the protection of victims' rights. This outcome may lead parties to question the appropriateness of the legal application and whether their rights are protected in the most effective manner. When shifting our focus to the realm of human rights governance in foreign-related civil and commercial cases, we can design a diversified structure of conflict norms to avoid the rigid results of a single conflict rule application, achieving diverse protection of human rights values and a balance of rights in the process of legal choice. After all, this not only concerns the rights of foreigners in China but also involves better protecting the legitimate rights of Chinese parties overseas, which will also positively impact the recognition and enforcement of judgments in foreign-related civil and commercial cases.

A. Optimization of protection effect for rights of the vulnerable groups

The application of Article 46, the *Law of the Application of Law* in China, regarding cross-border personality rights infringement cases, which applies the law of the habitual residence of the person whose rights are infringed, reflects legislative efforts to protect the rights of vulnerable groups. However, this provision may not achieve the optimal outcome in protecting the rights of the infringed party. Firstly, from the perspective of personal law (*lex personalis*), solely applying the law of the habitual residence of the person whose rights are infringed requires overcoming the definitional obstacles related to the habitual residence itself. Because habitual residence is a relatively vague concept, its uncertainty may arise from issues related to determining the assessment period for habitual residence and the settling intention of the parties, potentially affecting the legitimate interests of the parties involved. In private international law, personal law is typically used to handle conflicts in civil law areas such as personal identity, capacity, marriage, family, and inheritance, as well as tort. Its key lies in establishing a connection between the individual and the legal system of a specific territory, often based on factors like nationality, residence, or habitual residence of the parties.⁷⁵ Professor He Qisheng has pointed out that in China, there has been a new development in the field of personal law connecting factors, transitioning from a diverse approach to a more singular one.⁷⁶ In his view, before the promulgation of the *Law of the Application of Law* in China, the provisions related to personal law were relatively few and mainly focused on areas such as the legal inheritance and support of foreign movable property and the capacity for natural persons' actions. However, they exhibited a diverse feature, covering the law of the country of settlement, the law of nationality, the law of residence, the law of the place of action, the law of the location of property, and the law of the place with the most significant relationship, etc.⁷⁷ However, after the implementation of the *Law of the Application of Law*, the previ-

75. Han Peide, *Private International Law* (Beijing: Higher Education Press, Peking University Press, 2007), 106.

76. He Qisheng, "Research on the Issue of Domicile under the Reconstruction Perspective of China's Personal Law," *Studies in Law and Business* 3 (2013): 85.

77. *Ibid.*

ous diversity in personal law was changed, with the habitual residence law replacing the applicable law to which other connecting points lead. Regarding the definition of habitual residence, the existing rules and judicial practices in China only focus on whether the parties have continuously resided for more than one year without considering whether there is a genuine purpose for residence. This may not be entirely reasonable in the field of foreign-related civil and commercial litigation. For example, some people may only reside in a place for more than a year for reasons such as studying or seeking medical treatment. They have not closely integrated into the local living environment or needs of social development, let alone familiarity with the local legal system. Secondly, by only stipulating the habitual residence of the victim as the sole connecting factor, the available choices of law are limited to the law of the victim's habitual residence, showing a clear lack of flexibility. For example, in certain series of cross-border personality rights infringement cases on the Internet, where the victims are numerous and their habitual residences are distributed across various countries. It is possible that the law of the habitual residence of some victims does not consider it a personality rights infringement or falls within the legitimate scope of freedom of speech. Therefore, if the law closely connected to the essential facts of the dispute is not applied, it will be impossible to achieve a fair and consistent judgment for various parties in the same case. Thirdly, the substantive legal content of personality rights in China's *Civil Code* implemented in 2021 is richer than that of the *Law of the Application of Law on Foreign-related Civil Relations* enacted in 2011 regarding personality rights. For example, the chapter on the right to life, the right to body, and the right to health in the *Civil Code* introduces new regulations on personality rights and interests protection such as human organ donation, clinical trials on human bodies, and human embryos, and addresses emerging issues like privacy and personal information rights. It is clearly inadequate to address the increasingly complex and diverse legal conflicts involving personality rights by relying solely on the applicable law to which the habitual residence of the infringed party, as the single connecting point, leads. Therefore, from the perspective of maximizing the protection of the rights of the vulnerable-groups or victims, there are aspects of Article 46 of the *Law on the Application of Law to Foreign-related Civil Relations* that are open to discussion.

In comparison, on the international reform front of legal application in cross-border personality rights infringement, the resolution titled *Internet and the Infringement of Privacy: Issues of Jurisdiction, Applicable Law and Enforcement of Foreign Judgments*⁷⁸, adopted during a conference convened by the Institut de Droit International in Hague in 2019, grants victims diverse legal choices. In the resolution, the legal application rules regarding the infringement of personality rights on the Internet encompass substantive legal choice methods, including victim autonomy and the most significant relationship principle. While this resolution has not yet become a unified treaty on the legal application of personality rights infringement at the Hague Conference on Private International Law, it does express the shared expectation of the majority of countries to incorporate substantive legal choice methods in cross-border personality rights

78. *Internet and the Infringement of Privacy: Issues of Jurisdiction, Applicable Law and Enforcement of Foreign Judgments*, page 7.

and tort conflict laws.

In conclusion, in the process of future improvement of China's personality rights and tort conflict laws, the optimization of the protection of the rights of the weaker parties can be achieved through diversified methods of legal choice. From the perspective of legislative changes in personality rights and tort conflict laws in the international community, in recent decades, principles such as party autonomy, the most significant relationship, and the application of laws favorable to the protection of the interests of the weaker parties have been introduced to varying degrees into the private international law legislation in the field of personality rights in various countries. Furthermore, transforming the form of unilateral conflict norms into diversified selective conflict norms to increase the flexibility of legal choice will better adapt to various new demands for the protection of foreign-related civil rights. As a matter of fact, compared to Article 45 of China's *Law of the Application of Law on Foreign-related Civil Relations*, which deals with product liability conflicts, this provision serves as a special conflict rule for infringement. It sets multiple connecting points for the injured party to choose from, including the place of the tort, the place where the damage occurred, the main place of business of the tortfeasor, and the habitual residence of the victim. It breaks the uniqueness of connecting point selection by increasing the number of connecting points, thereby expanding the legal choices available to the injured party and enhancing the rationality of legal selection. Therefore, in the process of both the static understanding and dynamic implementation of rights, there are many possible choices, and designing selective conflict rules that include diversified connecting points can promote the optimization of the protection of the rights of the weaker parties. In this regard, it further aligns well with Professor He Zhipeng's proposition of respecting the diversity of human rights civilization. That is to say, when we consider that the different choices of human rights are only relative to time and space, without a distinction of right or wrong beyond time and space, we actually uphold the concept of diversity in human rights civilization.⁷⁹

B. Establishment of a balance mechanism between personality rights and freedom of speech

When we advocate for the diversity of human rights civilizations and reject the singularity of human rights, it does not mean ignoring the conflicts arising from different human rights values. Contemporary conflict laws in the process of resolving conflicts between different national laws inevitably involve the coordination of human rights value conflicts.

1. Value balance in public order reservations

When personality rights conflict with other rights, most civil law scholars believe that priority should be given to protecting an individual's personal dignity based on the theory of the hierarchy of rights. This can also be incorporated into the consideration of public order in the application process of China's cross-border personality rights and tort conflict laws. From the perspective of substantive law values, the *Civil*

79. He Zhipeng, "On the Diversity of Human Rights Civilization," *Journal of Human Rights Law* 2 (2022): 41.

Code independently sets personality rights as a separate section, effectively realizing the development from party autonomy of will to the value of personal dignity. This is more in line with the reverse proposition of “from contract to identity” proposed by the renowned British jurist Maine in the *Ancient Law*.⁸⁰ The transition of this value concept is also essential for the digital era of the Internet. In the digital age, civil law places even greater emphasis than ever before on caring for individuals and protecting the rights of the vulnerable groups.⁸¹ With the deep integration of the Internet, big data, and artificial intelligence technologies into various aspects of people’s work, life, health, education, medical care, transportation, finance, and other fields, the elements of personality, such as the voice, name, image, privacy, and personal information of natural persons have gained broader application scenarios and purposes. This progress has greatly expanded the commercial value or social regulatory value of individual personality rights.⁸² In the process of using mobile Internet applications, natural persons are essentially unavoidably subject to various data platforms collecting personal data information, which also poses a greater threat to individual personality rights such as privacy and information security. In this regard, scholars such as Professor Zhang Wenxian and Professor Ma Changshan advocate for the establishment and protection of human rights in the digital and networked era, referred to as “digital human rights”.⁸³ Therefore, from the perspective of private law rights, the personality rights protection is a prerequisite for the realization of other rights. When there is a conflict between personality rights and other rights, prioritizing the protection of individual personality rights according to the theory of rights hierarchy is more reasonable and just. In this way, it aligns with Kant’s statement that a person is, “at all times also as an end, and not only as a means.”⁸⁴ Therefore, when the defense of freedom of speech invoked by foreign parties conflicts with the substantive legal values of personality rights in China, the aforementioned value judgment can be introduced as a final safety valve in the public order preservation system.

2. Allocation of rights in conflict norm design

While emphasizing granting greater legal autonomy to victims, we should not overlook considerations of the interests of the relative rights-holders, which implies that the exercise of victims’ rights also needs to adhere to certain principles of pro-

80. Maine, *Ancient Law*, translated by Shen Jingyi (Beijing: The Commercial Press, 1996), 72, 96 and 97.

81. Wang Liming, “Constructing the Civil Law System in the Age of Civil Code — From ‘Borrowing’ to ‘Localizing,’” *Law Science* 7 (2022): 108.

82. Wang Liming, “Civil Law in the Digital Age,” *Journal of Comparative Law* 4 (2022): 23-27.

83. Professor Zhang Wenxian proposed that with the deep integration of digital technology into social production and people’s lives, the widespread use of digital technology has become an indispensable part of people’s lives, survival, and development. In such a context and social domain, “digital human rights” has emerged as the fourth generation of human rights. Professor Ma Changshan suggested that with the deep development of the digital economy and smart society, the form of human rights is undergoing profound digital reshaping, breaking the existing pattern of “three generations” of human rights development and ushering in the “fourth generation of human rights” represented by “digital human rights”; its development motive lies in the information revolution. See Zhang Wenxian, “Human Rights Jurisprudence in the New Era,” *The Journal of Human Rights* 3 (2019); Ma Changshan, “The ‘Fourth Generation of Human Rights’ under the Background of Smart Society and Its Protection,” *China Legal Science* 5 (2019).

84. Immanuel Kant, *Fundamental Principles of the Metaphysic of Morals*, translated by Miao Litian (Shanghai: Shanghai People’s Publishing House, 2012), 40.

portionality to be fair and reasonable. Specifically, the right of victims to unilaterally choose the applicable law should be controlled within certain limits to be considered proportional, and it is a key aspect in balancing conflicts of rights. Perhaps, under existing conditions, effective measures worth considering could be drawn from provisions like Article 139 of the *Swiss Federal Code on Private International Law* (2017 revision), Article 55 of the *International Private Law Act of Montenegro* (implemented in 2013), etc. These laws stipulate that in personality rights infringement cases, the law chosen by the victim should be the one from the country to which the law that the perpetrator could foresee the harm occurring belongs.⁸⁵ Because if the law of the habitual residence of the right holder considers it a phenomenon of personality rights or personality rights infringement, while China considers it not meeting the constitutive elements of personality rights infringement, this could lead to inadequate protection of the interests of the defendant in China, and may even involve foreign punitive compensations with high costs. Therefore, citizens or legal entities must have a certain level of understanding of the law of the habitual residence of the right holder. However, China's conflict rules on personality rights infringement under the *Law of the Application of Law* do not grant the tortfeasor a certain right of defense. This is likely to result in restrictions on the rights of individuals or media for legitimate freedom of speech for public interest and public supervision. Therefore, in the future, it may be advisable to consider and learn from reasonable practices in the international community that grant the tortfeasor a certain right of defense in conflict rules related to personality rights infringement.

V. Conclusion

Exploring the development of human rights protection in cross-border personality rights and tort conflict laws holds significant practical relevance and value in understanding how the current legal framework for cross-border personality rights infringement in China can meet the demands of human rights protection. Furthermore, it has the potential to synergize with research findings from other disciplinary perspectives on human rights, contributing to the robust development of human rights studies in China. Since the mid-20th century, with the integration of the concept of human rights protection into international treaties and national constitutions of various countries, the legislative processes of private international law, foreign-related civil and commercial judicial practices, and international judicial assistance have gradually incorporated the value orientation of substantive justice and the protection of the rights of the vulnerable groups. Thus, this integration has achieved a dynamic balance between formal equality and substantive equality. In this way, it has expanded the developmental space of the concept of human rights protection in cross-border personality rights and tort conflict laws. However, the diversity of human rights civilizations implies that rights conflicts may arise in the development of human rights protection in cross-bor-

85. Article 55 of the *International Private Law Act of Montenegro* (implemented in 2013). Paragraph 2, Article 99 of the *Belgian Codification of Private International Law* (implemented in 2004). Article 35 of the *Turkish Act on International Private and Procedure Law* (1) (Act No.5718 revised in 2007). See Zou Guoyong translated and annotated, *Translation of Foreign Private International Law Legislation* (Wuhan: Wuhan University Press, 2017), 296, 354 and 380.

der personality rights and tort conflict laws, such as conflicts between personality rights and freedom of speech, and other basic rights. In addressing the conflict between personality rights and freedom of speech, among other basic rights, one can apply the value judgment of the public order reservation system in conflict law based on the theory of the hierarchy of rights, prioritizing personality rights protection. Alternatively, one can employ the proportionality principle to impose reasonable restrictions on the exercise of other basic rights, such as freedom of speech. When considering the current framework of cross-border personality rights and tort conflict laws in China, we can optimize the protection of the rights of vulnerable groups through diverse legal choice methods and establish a mechanism to balance personality rights and freedom of speech. These efforts, in the end, can effectively promote the development of the protection plan for personality rights outlined in the *Human Rights Action Plan of China (2021-2025)* and enrich the human rights legal protection system in the field of foreign-related civil and commercial affairs in China.

(Translated by *LI Donglin*)