German Federal Court of Justice on the Pegasus-Software Scandal: States do not have a general right of personality

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On February 24, 2026, the German Federal Court of Justice ruled on the Kingdom of Morocco's claim against the German news portal "Zeit Online" (Case no. VI ZR 415/23). In 2021, the journal alleged that Morocco had spied on several lawyers, journalists, and high-ranking politicians, including French President Emmanuel Macron, using the surveillance software "Pegasus". Morocco denied the allegations and sued the publication for damages, claiming an infringement of its general right of personality. The Federal Court of Justice of Germany, the highest court for civil and criminal matters, rejected Morocco's claim, arguing that states do not have such a right. This decision is interesting because it lies at the intersection of private international law, national tort law, and public international law. The following article aims to present the main points of this decision in terms of both its international and substantive aspects.

I. Aspects of Private International Law: A too Easy Gateway into German Law?

First, the court had to determine if it was competent and which law should apply to this claim (Nos. 7 et seq.). Despite the claimant's status as a Third State, the application of the Brussels Ibis Regulation (EU 1215/2012) was unproblematic here. Morocco's claim was not made "in the exercise of State authority (acta iure imperii)" (Art. 1(1) Brussels Ibis), and the defendant is based in a European Union Member State (Hamburg, Germany).

However, the determination of the applicable law revealed some hesitation on the part of the Court (Nos. 11 et seq.). Surprisingly, the Court did not decide whether

the Rome II Regulation or German autonomous private international law should apply to the case (no. 13). Although the court considered the possible application of the exception of Art. 1(2)(g) Rome II ("non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation."), the Court did not address whether an infringement of a legal person's reputation falls under this exception (nos. 15 and 16). However, infringements of rights relating to personality through the media clearly fall under the exception of Art. 1(2)(g) Rome II. The debate about applying this exception to legal persons is actually caused by the application of the Rome II Regulation to claims related to unfair competition (Art. 6(1) and (2) Rome II), not by their mere quality as legal persons (see CJEU, ECLI:EU:C:2017:766, Bolagsupplysningen and Ilsjan, mn. 38). However, the present case is not related to business matters or competition claims; therefore, the exception of Art. 1(2)(g) Rome II should clearly apply.

Therefore, German private international law should apply, which the Court also examined (nos. 18 et seq.). The Court found that the parties had made an implied choice-of-law agreement for German law (no. 19). The Court ruled that, throughout the entire procedure, the parties' exclusive reference to substantive German law satisfied the conditions of such an agreement under Art. 14(1)(a) Rome II (no. 17) and Art. 42 of the Introductory Act to the Civil Code (EGBGB). This decision, if it can be understood, left some kind of an aftertaste of insecurity of the Court, as it appeared to be the simplest way to reach German law. Art. 40 EGBGB, relating to the applicable law for torts, allows the claimant to choose between the place where the harm arose (*Erfolgsort*) and the place where the event which gave rise to the harm occurred (*Handlungsort*). The eventual question of the claimant's (Morocco) choice for determining where the harm occurred would have led to the well-known difficult question of the localization of such an infringement through the Internet and the possible application of Moroccan law. In such a case, the Court would also have had to consider the application of Art. 40(3)(2) EGBGB, which states that this law is inapplicable if the claimant's purpose is not actually to seek compensation (e.g. to exert pressure on the defendant). The Court did not address these issues and concluded that German law applies.

II. Aspects of Substantive Law: A Panorama of Public International Law for the Benefit of Private Law

German tort law is based on a restrictive approach. The central norm, Sect. 823(1) of the Civil Code (BGB), lists the legally protected rights: Life, Body, Health, Freedom, Property and "other right". This last category allows for the protection of interests comparable to those listed, such as the right to one's personality, or the protection of victims from certain types of professional pure economic loss. Schematically, damages can only be granted for other interests if the tortfeasor infringed upon a protective law (Sect. 823(2) BGB) or if the harmful act is immoral (Sect. 826 BGB), which conditions are stricter.

Therefore, the claimant first tried to obtain damages based on the general case law regarding the infringement of personality rights under Sect. 823(1) BGB, and second, based on the infringement of criminal laws as protective laws under Sect. 823(2) BGB. However, the claims based on criminal legislation (Sect. 90a, 90b, 185 et seq., 102 to 104a of the Criminal Code, StGB) failed because foreign states are not subject to these norms (nos. 62 et seq.).

Therefore, the debate focused on Sect. 823(1) BGB and, logically, if such a right of personality also exists for states. After establishing that domestic law does not grant states such a right according to settled case-law (nos. 21 et seq.), the Court considered whether such a right exists as a general principle of public international law (nos. 23 et seq). In doing so, the Court examined an extensive body of case law (nos. 28 et seq.) from international courts and arbitral tribunals, the European Court of Humans Rights, diverse international and regional organizations (e.g. the Council of Europe, the European Union, the OSCE…) and national courts (USA, England, Scotland, France and Germany). The Court concluded that a protection of an alleged right of personality for states against private individuals does not exist. Most of the relevant decisions involve cases concerning diplomats or claims from state to state. In fact, the Court noted that many organizations encourage states to refrain from suing journalists regarding questions of the state's reputation to guarantee freedom of speech and press freedom (cf. no. 54). Although the Court does not explicitly refer to it, the idea of extracontractual liability that does not "open the floodgates" of liability, as well as

the weighing of interests, are typical to German tort law. The interest of a foreign state in protecting its honor against statements by private individuals is neither necessary nor worthy of protection under civil law.

III. Final remarks

By ruling that foreign states do not have a right of personality that can be enforced against private individuals, the German Federal Court aligned itself with the decision of the French Cour de Cassation. The highest French court for civil and commercial matters also decided on the very same case in 2024, i.e. a claim of the Kingdom of Morrocco against a French journal regarding the very same accusations. In this case too, the French Cour de cassation – without spending a word on the aspects of private international law – decided that “a foreign state is not entitled to bring a public defamation action against an individual” (no. 12). These decisions are certainly welcome, as they reinforce the independence of the press against foreign attempts to influence press freedom in Europe, especially in these troubled times.