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Regulated Human Skin: Tattoos as Expressions of Art, Culture, and Public Law

Abstract: This article examines the legal consequences of imposing normative, regulatory, or contractual restrictions on tattooing, conceiving it as a form of cultural and artistic expression that challenges the structure of public law. The analysis is situated within public law and cultural law, focussing on the limits to state and institutional measures when they affect fundamental rights such as bodily autonomy, freedom of expression, image rights, and the free development of personality. From a methodological standpoint, the research follows a qualitative and analytical path in legal reasoning, presenting doctrinal analysis with comparative and jurisprudential examination. It draws upon constitutional provisions, statutory frameworks, and judicial precedents, as well as academic discussions in the fields of fundamental rights, health regulation, and bioethics. The inclusion of cases from Colombia, the United States, Japan, Germany, and Ecuador was guided by a comparative rationale that seeks to reveal points of convergence and divergence among legal systems, rather than promoting their normative homogenization. Ultimately, the purpose is to advance a deeper legal comprehension of how tattooing is interpreted within different jurisdictions,

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especially when it intersects with practices that enjoy constitutional protection as expressions of culture.

Keywords: cultural law, freedom of bodily expression, personal autonomy, right to one's own image, tattoo

Introduction

The research developed in this article treats tattooing as a cultural phenomenon expressed through personal autonomy and freedom of expression, with the aim of determining whether it constitutes a cultural practice with legal significance within public law and cultural law. Tattooing is understood here as a symbolic inscription upon the human body that generates and communicates meanings within the realm of culture, occupying a space in which law, identity, and creativity converge. The legal analysis of its regulation allows for an examination of how legal systems interact with practices performed on the human body, practices that cannot be reduced to artistic products or private aesthetic decisions, as they express elements of identity, memory, and symbolic plurality. Accordingly, locating tattooing within the field of cultural law helps clarify how this area of law may respond to contemporary forms of embodied expression, recognizing that constitutional protection of culture extends not only to traditional or institutional manifestations, but also to the everyday acts through which individuals construct bodily identity and meaning.

Tattooing provides an illustrative example of why the scope of cultural law must be reconsidered. It demonstrates that culture is not confined to officially recognized art or tangible heritage, but may also be inscribed directly on the human body, transforming it into a medium of creative expression. For this reason, tattooing invites reflection on how normative frameworks should address practices that merge bodily autonomy, artistic freedom, and cultural diversity. In this regard, the tattooed body becomes a living text in which cultural meanings are expressed and interpreted, leading cultural law to expand its reach to encompass both tangible and intangible manifestations of creativity and identity.

Tattoos have become visible expressions of identity and aesthetic choice, embodying personal narratives and symbolic values that place the human body at the centre of legal and institutional debates. In some instances, however, legal norms restrict the display of tattoos on the grounds of potential conflicts with other rights. To assess such restrictions, the principles of legality and proportionality must be analysed through the lens of cultural law and in line with the protection of symbolic expression and practices linked to individual and collective identity.

The lack of unified legal frameworks on bodily cultural expressions such as tattooing reveals the need for an integrated normative interpretation. This article addresses that gap by analysing tattooing as a meaningful cultural practice that

implicates both individual rights and the constitutional protection of symbolic expression. The study is guided by one central legal question: How should the regulation of tattooing be interpreted when it constitutes a cultural practice under constitutional law?

To answer this, a qualitative documentary method is used, analysing constitutional provisions, case law, and legal scholarship. The article identifies the legal criteria for regulating body art, recognizing tattoos as symbolic inscriptions that challenge and enrich the legal understandings of the body as a space of cultural expression. The analysis focusses on Latin America – particularly Colombia, Mexico, Brazil, and Argentina – the constitutions of which protect autonomy, identity, and expression. Comparative references to the USA, Germany, South Korea, and Japan illustrate diverse legal responses to bodily practices and their governance.

Tattooing in the Legal History of Art and Culture

Tattooing, with its prehistoric origins, has long existed at the crossroads of law and culture. Its very etymology[1] reflects symbolic inscription, indicating its embeddedness in normative orders. Under Roman law, tattoos served as punitive marks, turning the body into a site of legal communication. Later, monotheistic religions reframed tattooing to be incompatible with divine likeness,[2] a view that gained legal force under Constantine and culminated in a papal ban in 787,[3] which anchored tattoo prohibitions within the doctrine of sacred corporeality.

The Colombian Constitutional Court has recognized tattooing[4] as a constitutionally protected form of expression rooted in identity and cultural meaning, particularly in cases of appearance-based discrimination.[5] In Indigenous contexts, it carries juridical,[6] spiritual, and aesthetic significance, functioning beyond ornamentation. Contemporary analyses also emphasize its symbolic function in expressing memory[7]

1 A. Dávila-Camargo, O. Olvera-Morales, J.L. Tovilla-Canales, *Todo lo que el cirujano oculoplástico necesita saber del maquillaje permanente. Serie de casos y revisión de la literatura*, "Revista Mexicana de Oftalmología" 2021, Vol. 95(4), pp. 135-143, https://doi.org/10.24875/rmo.m21000177.

2 W.M. Gustafson, *Inscripta in Fronte: Penal Tattooing in Late Antiquity*, "Classical Antiquity" 1997, Vol. 16(1), pp. 79-105.

3 F. Pesapane et al., *A Short History of Tattoo*, "JAMA Dermatology" 2014, Vol. 150(2), p. 145.

4 Constitutional Court of Colombia, Judgment T-030/04, Opinion by Justice Clara Inés Vargas Hernández, 22 January 2004, https://www.corteconstitucional.gov.co/relatoria/2004/t-030-04.htm [accessed: 15.10.2025].

5 L. Aldaz et al., *Percepciones del tatuaje como expresión cultural en AMBA*, "Interdisciplinaria. Revista de Psicología y Ciencias Afines" 2021, Vol. 38(1), pp. 235-243.

6 F. López-Naranjo et al., *Historical Evolution and Current Status of Tattoos*, "Fides Et Ratio" 2023, Vol. 25, pp. 45-68.

7 J.A.L. Mise, E.C.V. Ruiz, *Representación y el arte en el cuerpo: el tatuaje como significación social*, "Arandu UTIC" 2024, Vol. 11(2), pp. 3182-3194.

and belonging.[8] Historically, however, tattoos became linked to stigmatized groups in penal[9] and military settings, shaping social perceptions of deviance that continue to influence exclusionary legal and cultural frameworks.

The increased public visibility of tattooing – particularly through media exposure and high-profile individuals – has played a crucial role in its normalization and recognition as a legitimate artistic profession.[10] This evolving visibility has paralleled the sector's growing professionalization, which points to a broader legal and institutional reconfiguration of tattooing within frameworks of cultural policy, artistic labour protections, and expressive freedoms.[11] From a legal standpoint, tattooing is increasingly understood as a mode of embodied self-expression.[12] While some interpretations stress its autobiographical dimension, others regard it as a form of resistance to cultural homogenization[13] or as a vehicle for the externalization of subjectivity that transcends mere aesthetic concerns.[14]

The aesthetic and artistic evolution of tattooing has elevated its legal relevance as a form of protected creative expression.[15] The integration of digital design and contemporary graphic styles has strengthened its recognition in the artistic domain, provoking debates on copyright and artistic freedom.

The relationship between tattooing and freedom of expression generates a conflict between individual artistic autonomy and institutional regulation,[16] as documented cases of workplace discrimination reveal a normative tension between cultural expression and the demands of professional decorum. For this reason, judicial decisions concerning tattoos in employment contexts often expose un-

[8] M.A.G. Pérez, *"Esa extraña marca de los más célebres bandidos": el tatuaje en Colombia en la primera mitad del siglo XX*, "História, Ciências, Saúde-Manguinhos" 2025, Vol. 32, https://doi.org/10.1590/S0104-59702025000100009.

[9] A.D. Castro, J.I. Aragonés, *El tatuaje y su relación con características personales y sociales*, "Psicumex" 2016, Vol. 6(2), pp. 50-65.

[10] A. Walzer-Moskovic, *El arte en el discurso de los tatuadores*, "Arte, Individuo y Sociedad" 2015, Vol. 27(3), pp. 463-481.

[11] S. Palma-Peña, A. Bernales-Salinas, *Historia, conceptualización y utilidad del tatuaje*, "Piel" 2023, Vol. 38(8), pp. 487-490.

[12] M.B. Ramos-de Viesca, J. Casillas-Ledesma, C. Viesca-Treviño, *El arte en la piel. Los tatuadores: un análisis bioético de su práctica profesional*, "Bioethics Update" 2022, Vol. 8(1), pp. 50-66.

[13] G.R. Reyes, *El tatuaje en universitarios: de lo gráfico a lo subjetivo*, "Question" 2021, Vol. 3(70), https://doi.org/10.24215/16696581e630.

[14] T.M. Brenes, *Reflexiones sobre la historia, legitimación e inserción del tatuaje en el arte contemporáneo*, "Arte, Cultura y Sociedad: Revista de Investigación a Través de la Práctica Artística" 2021, Vol. 1(1), https://doi.org/10.15359/acs.1-1.3.

[15] A.M. Paulin, R.C.G. Rivera, *La tinta y la bata blanca*, "Revista Digital Universitaria" 2021, Vol. 22(5), http://doi.org/10.22201/cuaieed.16076079e.2021.22.5.1.

[16] Y.M. Santiago, R. Rodríguez-Montalbán, A. Rosario-Rodríguez, *Escala de discrimen hacia los tatuajes en el contexto laboral*, "Revista Caribeña de Psicología" 2024, Vol. 8, e7847, https://doi.org/10.37226/rcp.v8i1.7847.

derlying social prejudices, raising significant questions about non-discrimination[17] and the protection of artistic expression.

Tattooing has historically been associated with criminality, marginality, and deviance,[18] particularly in penal and military contexts, where it became a visual marker of exclusion. These associations informed legal and social attitudes that pathologized tattooed bodies as transgressive or risky.[19] While contemporary discourse increasingly reframes tattooing as cultural expression, remnants of this stigmatizing legacy persist, affecting how institutions perceive and regulate bodily inscription.[20] Recognizing its symbolic, aesthetic, and autobiographical dimensions is essential to advancing legal frameworks that respect expressive freedom and dignity.[21]

In Early Modern Italy, tattooing evolved from a stigmatized bodily mark into a recognized expression of Christian devotion, illustrating how its legal meaning depends on institutional and doctrinal contexts. Far from being a mere bodily modification, tattooing emerged as a symbolic act that constructs identity and interacts with legal discourse. As a cultural artefact, it embodies and redefines juridical meaning within pluralistic societies. Artistic practices such as tattooing perform a legal function by mediating[22] between law and cultural expression, fostering alternative modes of justice, and shaping legal consciousness.

Tattooing as Cultural and Artistic Expression within the Framework of Fundamental Rights

The regulation of tattooing as bodily expression raises constitutional questions about the scope of free speech when expression is embodied, artistic, and cultural. The human body serves as a legitimate site for symbolic and aesthetic meaning. Tattooing, beyond decoration, acts as a communicative practice rooted in cultural frameworks. It conveys social meanings, identity, and memory, warranting constitutional protection when regulated by state or institutional norms.

As observed in the Argentine context, the decision to be tattooed is shaped by cultural structures that precede and inform individual agency. Tattooing cannot be understood in isolation from the sociocultural and symbolic orders in which it is

17 E.C. Zaera, *Influencia de los tatuajes y sus diferentes estilos en la formación de primeras impresiones*, "Revista de Comunicación de la SEECI" 2024, Vol. 57, https://doi.org/10.15198/seeci.2024.57.e866.

18 A. Cifuentes-Muñoz, B. Cifuentes-Gajardo, *Tatuajes y duelo: narrativas de adultos de la ciudad de Talca, Chile*, "Revista Humanidades" 2025, Vol. 15(1), e59877, https://doi.org/10.15517/h.v15i1.59877.

19 M.P. Díaz, *El cuerpo como discurso a través del tatuaje*, "Revista Digital Universitaria" 2022, Vol. 23(3), http://doi.org/10.22201/cuaieed.16076079e.2022.23.3.7.

20 G. Guerzoni, *Tatuajes devocionales en la Italia de la Edad Moderna*, "Espacio, Tiempo y Forma. Serie VII, Historia del Arte" 2018, Vol. 6, pp. 119-136.

21 Z. Alker, R. Shoemaker, *Convicts and the Cultural Significance of Tattooing in Nineteenth-Century Britain*, "Journal of British Studies" 2022, Vol. 61(4), pp. 835-862.

22 K. Otálora, J. Hernández, *Putchipu'ui Art and Law: From the Word to the Image. Alternative Dispute Resolution Amongst the Wayuu People*, "Novum Jus" 2018, Vol. 12(1), pp. 221-244.

embedded. From a legal standpoint, this understanding implies that any normative measure seeking to limit tattooing as a form of artistic or cultural expression must adhere to constitutional standards governing the restriction of symbolic speech. Such regulation must be justified not only by reference to public interest, but also through a proportionality analysis that respects the expressive, cultural, and artistic dimensions of the practice.

In the context of employment, tattooing may become a basis for practices of differentiation or exclusion, raising constitutional concerns regarding the obligation to guarantee substantive equality and prevent discrimination based on non-functional aesthetic criteria. From a legal standpoint, such differentiation must be assessed in terms of its justification, objectivity, proportionality, and alignment with a legitimate aim attributable to the employer or the relevant public authority. In certain occupations, the visible display of tattoos can lead to restrictions in hiring or promotion, often grounded in institutional image standards rather than in criteria of professional suitability or job performance.

Although often framed as neutral, these measures may conceal aesthetic biases that disproportionately affect expressions of cultural or artistic identity. As tattooing constitutes a protected form of bodily and symbolic expression, its restriction must be subject to constitutional scrutiny. This requires that any limitation on expressive practices complies with the standards governing symbolic freedom and the protection of cultural diversity. In this regard, restrictions must be examined case by case through a proportionality test,[23] ensuring that institutional norms, contractual clauses, or appearance policies genuinely pursue constitutionally valid objectives. Applied to tattooing, this means that the body as a medium of cultural inscription demands heightened legal protection, and that any restriction must meet the conditions of being exceptional and strictly necessary under constitutional law.

The connection between tattooing and the right to the free development of personality, a constitutional guarantee that protects the individual decisions through which each person defines their own life project, demonstrates that this right includes dimensions of personal identity, aesthetic autonomy, and symbolic self-determination. It is therefore necessary to examine both public and private interferences in artistic and bodily forms of self-representation, particularly when these expressions involve the human body as a medium for cultural and artistic manifestation. Any restriction on practices of this kind requires careful legal scrutiny to determine its legitimacy.

Tattooing cannot be understood merely as a matter of appearance or ornamentation because it conveys narratives of identity, memory, and belonging that function as cultural representations. Within the legal domain, these representations have provoked debate between bodily self-inscription and institutionalized norms of rec-

[23] L.A.P. Núñez, *Análisis del delito de ultraje a los símbolos nacionales (artículo 416 del Código Penal)*, "Opus Magna Constitucional" 2020, Vol. 16, pp. 325-360.

ognition. The issue becomes legally relevant when regulatory frameworks impose appearance-based conditions that restrict or sanction certain aesthetic forms of bodily expression. In such situations, the right to the free development of personality serves as a normative standard for assessing the constitutionality of these limitations and requires legal systems to reconcile bodily expressiveness with constitutional principles. This ensures that the symbolic, artistic, and cultural practices associated with tattooing are not unduly restricted by disciplinary or homogenizing rules.

In the area of public health, tattooing involves both the right to health and the right to bodily integrity, particularly with regard to the safety of aesthetic interventions on the body. Because tattooing consists of invasive procedures, strict hygienic standards must be followed, and regulatory frameworks must establish technical and sanitary measures to minimize health risks. For this reason, informed consent is a fundamental requirement in all such procedures.

The state must prevent avoidable harm linked to bodily practices, without imposing unjustified limits on personal autonomy. While targeted regulation of informal tattooing may be warranted, such measures must not undermine its legitimacy as a form of individual, cultural, and artistic expression. Health law must balance public safety with respect for bodily self-determination, recognizing tattooing as both a health-related practice and a symbolic act tied to identity and constitutionally protected cultural rights.[24]

The regulation of tattooing, as a bodily practice that integrates expressive, cultural, and identity-related dimensions, must be analysed within the framework of constitutional law, with particular attention paid to the rights to freedom of expression, equality, the free development of personality, and individual autonomy. Tattooing represents an aesthetic intervention that transforms the body into a site of personal and symbolic expression, thereby acquiring legal relevance not only as a manifestation of selfhood, but also as a cultural act protected under democratic constitutionalism. Given this normative complexity, any legal intervention affecting tattooing must adhere to the constitutional principles of legality, reasonableness, and proportionality. These principles serve as safeguards against excessive or unjustified restrictions, especially when state regulatory measures intrude upon decisions situated within the personal and intimate sphere of bodily autonomy. In such cases, the legitimacy of state regulation must be justified through a rigorous constitutional analysis that balances public objectives with the protection of aesthetic and cultural freedoms.

Any legal restriction on tattooing must satisfy strict scrutiny: it must serve a legitimate purpose and be duly justified. Regulatory limits on its visible expression must thus remain exceptional, well-reasoned, and aligned with constitutional guarantees such as freedom of expression, cultural identity, and bodily autonomy.

[24] M.L. Pérez-Cotapos, M.L. Cossio, *Tatuajes y perforaciones en adolescentes*, "Revista Médica de Chile" 2006, Vol. 134(10), pp. 1322-1329.

While tattooing is a protected form of expression, particularly when it conveys cultural or artistic meaning, it is not categorically exempt from regulation. Restrictions may be permissible in legally justified circumstances, especially when linked to public health, institutional functionality, or professional standards. However, such measures must be based on clear, reasonable, and proportionate legal grounds serving constitutionally valid objectives. Artistic expression through tattooing cannot be considered absolute, but its restriction demands a higher level of justification, particularly when it intersects with rights related to personal identity and symbolic communication. Legal analysis must account for the specific context in which the measure is applied, the public or private nature of the function involved, and the extent to which the restriction affects the exercise of the right. In this framework, tattooing emerges not only as a bodily practice, but as a constitutionally relevant form of cultural production and individual expression.

Restrictions on tattooing are commonly justified on three grounds: state neutrality, the protection of minors, and professional image standards. However, under constitutional analysis, these justifications are only valid if they pass a proportionality test: neutrality is not compromised by the mere presence of a tattoo unless it conveys discriminatory symbols; the protection of minors justifies minimum-age rules and informed consent, but not blanket prohibitions; and professional image standards, when based on subjective aesthetic criteria, risk perpetuating exclusions that lack a legitimate constitutional aim. Accordingly, any restriction must remain exceptional, legitimate, and strictly necessary, reconciling bodily autonomy, freedom of expression, and cultural identity.

Tattooing and Regulatory Authority

The legal regulation of tattooing has expanded significantly, reflecting its recognition as a culturally embedded and artistically meaningful practice. Legal responses have evolved from addressing hygiene and public health concerns to acknowledging tattooing as a form of bodily inscription with symbolic and identity-bearing significance. Regulatory frameworks increasingly support professionalization, situating tattoo artistry within both the cultural and economic spheres.

However, the absence of international regulatory harmonization exposes inconsistencies across jurisdictions, highlighting the need for legal systems to integrate the artistic and cultural dimensions of tattooing. Rather than treating it solely as a health-sensitive activity, the law should address its intersection with autonomy, expression, and identity. A comprehensive legal approach must align public health standards with constitutional and cultural safeguards, affirming tattooing as a form of visual art and cultural self-representation.

Public health research has identified significant risks associated with unregulated tattoo inks and instruments, especially under inadequate sanitation. In the USA, the Food and Drug Administration has acknowledged regulatory gaps concerning pigment composition, while the Council of Europe, as noted by

Alarcón-Herrera and Flores Maya,[25] has urged regulatory frameworks to address these health risks. In this context, the precautionary principle provides a normative foundation for legislative intervention, requiring alignment with the right to health and evidence-based standards. However, such regulation must also preserve the cultural, artistic, and expressive dimensions of tattooing, ensuring that public health safeguards do not undermine personal autonomy or the symbolic meaning of bodily inscription in contemporary culture.

The absence of specific, harmonized legislation on tattooing, coupled with territorial disparities, reveals a structural deficiency in normative coherence that weakens institutional oversight and public health protection. Comparative studies have identified this fragmentation as a barrier to consistent legal frameworks. From a constitutional perspective, such regulatory gaps must be evaluated considering the state's obligation to safeguard bodily integrity.

To address this, proposals have included licensing regimes, technical training, and hygiene standards aimed at ensuring procedural safety. The lack of coherent regulation across jurisdictions underscores the need for legislative development. In Ecuador, the call for professional qualification standards emphasizes that insufficient training heightens health risks.[26] These proposals embody both preventive goals and constitutional imperatives to promote legal certainty and protect physical integrity through proportionate, technically sound regulation.

Tattooing, as a symbolic and aesthetic practice, demands a regulatory approach grounded in a normative framework that reconceptualizes bodily inscription as a site of cultural, bioethical, and artistic significance. Rather than reducing it to a matter of health or appearance, tattooing must be recognized as a legitimate mode of identity construction and symbolic communication that engages constitutional protections of autonomy, dignity, and expressive freedom. In this sense, regulation should incorporate psychosocial dimensions, ensuring informed consent, respect for bodily integrity, and a dignity-based model. Moreover, given its expressive nature, tattooing falls within the protective scope of the right to the free development of personality – a right that constrains both public and private interference in decisions that materially affect cultural and artistic self-representation. Therefore, legal frameworks must not only address hygienic and procedural standards, but also engage with the creative and symbolic dimension of tattooing. Failing to do so risks reinforcing stigmas and exclusionary norms that delegitimize non-normative bodies and aesthetic choices. Within this legal/cultural matrix, regulations should promote inclusivity, safeguard cultural diversity, and guarantee symbolic autonomy. Recent legal developments in several jurisdictions illustrate this challenge: while some leg-

[25] N. Alarcón-Herrera, S. Flores Maya, *Efecto genotóxico de dos tintas empleadas en el arte del tatuaje*, "Revista Internacional de Contaminación Ambiental" 2021, Vol. 37, pp. 431-442.

[26] J. Oleas-Orozco, P. Villacis-Galora, M. Sandoval-Santana, *Tatuajes, Formación de profesionales del Arte Corporal. Análisis contexto ecuatoriano*, "Zincografía" 2022, Vol. 6(11), https://doi.org/10.32870/zcr.v6i11.134.

islative initiatives have advanced mandatory certifications and hygiene protocols to ensure public safety, their effectiveness ultimately depends on proper implementation and compliance with the principles of administrative due process and substantive justification. As such, regulation must be both technically sound and normatively legitimate, balancing public health with the imperative to protect artistic expression and cultural identity inscribed on the body.

Tattooing, as a symbolic and aesthetic practice, requires regulation that respects its cultural, bioethical, and artistic significance. Beyond health concerns, it constitutes a form of identity inscription and symbolic communication, protected by constitutional principles of autonomy and dignity. Regulatory models must incorporate psychosocial aspects, safeguard informed consent, and uphold a dignity-based approach. Given its expressive nature, tattooing falls under the right to free personality development, limiting undue state or private interference in cultural self-representation.

Legal systems must thus balance public health standards with the need to protect artistic expression. While some jurisdictions have introduced certification and hygiene protocols, their legitimacy depends on implementation and alignment with due process. However, technical soundness is not enough. Preventive frameworks should include public education campaigns that raise awareness of health risks while affirming the expressive nature of tattooing. In this integrated view, regulation must be culturally sensitive, avoiding disproportionate restrictions and affirming bodily and symbolic autonomy.

Table 1. Legal regulation of tattoos

Country	Law / Regulation	Core provisions
United Kingdom	Tattooing of Minors Act 1969[27]	Prohibits tattooing individuals under 18
Germany	Tätowiermittel-Verordnung (Regulation on Tattooing Products)[28]	Establishes general requirements for tattooing
United States	Various state laws[29]	Regulations on minimum age, licensing, and hygiene standards for tattooing
South Korea	Regulation permitting only licensed medical professionals to tattoo[30]	Only licensed physicians may legally perform tattoos

[27] UK Public General Acts 1969 c. 24.

[28] Tätowiermittel-Verordnung vom 13. November 2008, BGBl. I S. 2215.

[29] Texas Department of State Health Services, *Licensing Requirements – Tattoo and Body Piercing Studios*, https://www.dshs.texas.gov/tattoo-body-piercing-studios/licensing-requirements-tattoo-body-piercing-studios [accessed: 15.10.2025]; California Health and Safety Code § 119302; Revised Code of Washington 26.28.085.

[30] Y. Seo, M. Park, *S.Korean Court Upholds Tattooing Ban*, "Reuters", 31 March 2022, https://www.reuters.com/world/asia-pacific/skorean-court-upholds-tattooing-ban-2022-03-31/ [accessed: 15.10.2025].

Spain	Sanitary regulation for tattooing practice[31]	Health and hygiene regulation
Colombia (Bogotá)	Regulation of tattoo and piercing establishments[32]	Licensing and oversight of tattooing

Source: Author's compilation, 2025.

Case Law and Legal Doctrine on Tattooing as Artistic and Cultural Expression

A comparative examination of judicial decisions from Latin America, North America, and Europe reveals an emerging normative and jurisprudential orientation that, despite the absence of uniform doctrinal foundations, converges on the imperative to define the permissible scope of restrictions on tattooing through the legal principles of reasonableness and proportionality. These rulings do not merely address the regulation of bodily appearance, but the broader cultural and artistic dimensions of tattooing as a form of symbolic expression. Within this framework, tattooing is increasingly recognized as a legitimate manifestation of personal and cultural identity, meriting constitutional consideration in contexts such as employment, institutional settings, and the exercise of fundamental rights. The central legal question thus concerns the balance between individual autonomy in aesthetic self-configuration and the justifiable regulatory interests of public or private entities. Judicial analysis in this domain demonstrates an evolving recognition that legal restrictions must be narrowly tailored, culturally sensitive, and attentive to the expressive and artistic value embodied in tattoo practices.

Judicial interpretations in *Anderson v. City of Hermosa Beach*[33] and *Medici v. City of Chicago*[34] illustrate the evolving constitutional status of tattooing in US law. In *Anderson*, the Ninth Circuit affirmed tattooing as artistic and personal expression under the First Amendment, requiring strict scrutiny of regulations that affect symbolic bodily inscriptions. The municipal ban on tattoo parlours was struck down for failing to meet this standard. In contrast, in *Medici* a policy mandating officers to conceal tattoos was upheld, ruling that such expression, while symbolic, did not address matters of public concern and thus was unprotected in public employment. These rulings highlight the contingent nature of constitutional protections for bodily expression, especially within institutional contexts that prioritize discipline or uniformity over individual autonomy.

31 Real Decreto 192/2023, de 21 de marzo, por el que se regulan los productos sanitarios [Royal Decree 192/2023 of 21 March Regulating Medical Devices], Boletín Oficial del Estado, No. 76, 30 March 2023.

32 Acuerdo 103 de 2003 por el cual se dictan medidas para proteger la salud de las personas en la práctica de tatuajes y piercing en el Distrito Capital de Bogotá, D.C. [Agreement 103 of 2003, Which Establishes Measures to Protect People's Health in the Practice of Tattooing and Piercing in the Capital District of Bogotá], Registro Distrital 3016 de diciembre 29 de 2003.

33 621 F.3d 1051 (9th Cir. 2010).

34 856 F.3d 530 (7th Cir. 2017).

Latin American constitutional jurisprudence has increasingly recognized tattooing as a dimension of personal identity and cultural expression. In Judgment T-160 of 2018,[35] the Colombian Constitutional Court declared unconstitutional the exclusion of a candidate from recruitment for a correctional service position due to a visible tattoo, ruling that such restriction violated the rights to equality, personality development, and access to public employment. By applying a proportionality test, the Court affirmed that bodily inscriptions form part of constitutionally protected self-representation. A similar approach was adopted by the Constitutional Court of Peru,[36] which annulled a police directive excluding an officer on the same grounds, affirming the normative protection of non-discrimination and personal autonomy. These decisions demonstrate how constitutional courts in the region are advancing legal frameworks that challenge aesthetics-based exclusions, particularly when tattoos convey symbolic, artistic, or identity-related meanings. This trend situates tattooing within the broader scope of cultural rights, demanding rigorous judicial scrutiny when public institutions impose uniformity over expressive freedom.

Both *Anderson v. Hermosa Beach* and Judgment T-160 of 2018 reflect convergent constitutional approaches. In both jurisdictions, the Courts rejected categorical prohibitions based on general considerations of public health, discipline, or institutional image, and required that restrictions be implemented through specific and proportionate measures. The US case grounded protection in the freedom of expression guaranteed by the First Amendment, while the Colombian decision articulated it through equality and the free development of personality. Yet both converge on a common normative principle: tattooing, as a form of embodied symbolic expression, cannot be restricted without strict constitutional justification. Additionally, since tattooing is considered a cultural practice with identity-based and expressive significance, its legal regulation must be examined within the framework of the right to culture, which obliges states to recognize and protect the cultural diversity inscribed on the human body.

The case of Save My Ink Forever,[37] a company that preserves tattoos after death, is particularly noteworthy, as it raises complex legal, bioethical, and cultural questions. By extracting and treating human tissue, this practice is not only connected to the rules of cultural law, but also subject to regulations governing human remains, funeral procedures, and post-mortem aesthetic expression. The company requires informed consent, provided either through a will or authorization from family members. What is especially relevant in this case is the intersection with

[35] Constitutional Court of Colombia, Judgment T-160/18, Opinion by Justice Luis Guillermo Guerrero Pérez, 30 April 2018, case file T-6.341.488, https://www.corteconstitucional.gov.co/relatoria/2018/t-160-18.htm [accessed: 15.10.2025].

[36] Constitutional Court of Peru, Judgment 336/2022, Case No. 02027-2021-PA/TC (Eric Alonso Nieto Caccha), 9 August 2022, https://tc.gob.pe/jurisprudencia/2022/02027-2021-AA.pdf [accessed: 15.10.2025].

[37] Save My Ink Forever, *Licensing*, https://www.savemyink.tattoo/licensing [accessed: 15.10.2025].

succession law and biolaw, since the preservation of tattoos as patrimonial and symbolic goods generates debate over whether tattoos can be regarded as cultural or artistic heritage.

Legal systems must reconcile posthumous dignity, bodily autonomy, and health regulations. The legitimacy of preservation depends not only on consent and lawful purpose, but also on compatibility with cultural and sanitary standards. In this regard, tattoos are not mere skin tissue, but posthumous artefacts of artistic, cultural, and legal significance.

The cases *Brophy v. Cardi B*[38] and *Sedlik v. Kat Von D*,[39] both resolved in US federal courts, underscore the legal indeterminacy surrounding tattoos as embodied artistic creations. In *Brophy*, the Court dismissed the plaintiff's claim of privacy violation, finding the tattoo depiction to be insufficiently identifiable. In *Sedlik*, the Court held that a tattoo based on a reference photograph did not meet the threshold for copyright infringement. Together, these rulings reveal the instability of conventional legal categories – authorship, ownership, and image rights – when applied to tattoos inscribed on living bodies. They also expose unresolved tensions between patrimonial and personality rights in the context of artistic appropriation and commercial use.

The *Delvoye–Steiner* case, by contrast, radically extends these tensions. Conceptual artist Wim Delvoye's[40] contractual agreement with Tim Steiner, wherein Steiner's tattooed back was exhibited as art during his lifetime and sold to a collector for posthumous display, raises foundational legal and ethical questions. The commodification of the human body, particularly of the skin, tests the validity of future dispositional contracts over human tissue and challenges the limits of informed consent within cultural markets. In such cases, the tattooed human body appears to shift from a protected subject to a commercialized object, a transformation that demands a doctrinal reassessment of bodily autonomy, patrimonial rights, and the existing regulatory void surrounding corporeal artworks. These concerns compel legal scholars to reconsider the adequacy of intellectual property, privacy, and contract regimes, as tattoos have become spaces where personal identity, artistic expression, and economic value intersect. This evolution destabilizes the traditional distinction between the human body and the legal object, as well as between human dignity and the right to property regarding the human body.

Conclusions

Judicial decisions on tattooing show its legal significance at the intersection of art, culture, and constitutional rights. These cases span multiple legal fields and require

38 *Brophy v. Cardi B.*, 8:17-cv-01885 (C.D. Cal.).

39 *Jeffrey B. Sedlik v. Katherine Von Drachenberg*, 2:21-cv-01102 (C.D. Cal.).

40 H. Low, *The Man Who Sold His Back to an Art Dealer*, "BBC News", 1 February 2017, https://www.bbc.com/news/magazine-38601603 [accessed: 15.10.2025].

nuanced analysis, with courts stressing proportionality when restrictions affect autonomy, identity, or expressive freedom.

When tattooing is embedded within cultural practices that carry historical, ethnic, or communal significance, it acquires constitutional relevance as a form of symbolic expression and collective self-definition. In such contexts, the legal framework must move beyond a reductive view of tattoos as mere bodily alterations and instead recognize them as expressions of cultural identity that fall within the scope of constitutionally protected cultural rights. Accordingly, any regulatory measure affecting these practices must be interpreted through constitutional norms that safeguard diversity and promote intercultural respect.

Tattooing, as a cultural and artistic act inscribed on the living body, raises legal issues of authorship, ownership, and integrity. Its restriction in employment or public roles must be assessed under constitutional standards to avoid infringing on personal identity and cultural expression. Legal issues around tattooed skin – such as post-mortem preservation, inheritance, or display – expose regulatory gaps, as seen in cases where human skin is exhibited as art. These situations call for a legal response that balances artistic and patrimonial claims with dignity and autonomy.

Legal regulation must incorporate balancing mechanisms that protect both bodily integrity and the cultural dimension of tattoos as forms of identity and self-expression, which embody essential elements of human dignity, pluralism, and artistic freedom in democratic societies. For this reason, tattoos cannot be subjected exclusively to public health or professional licensing regulations; instead, a proportionality framework must be included to reconcile bodily autonomy, freedom of expression, and cultural heritage within constitutional guarantees. Accordingly, legal systems should integrate cultural protection clauses while ensuring that any legal limitations are strictly necessary and respectful of tattoos as intangible forms of cultural expression.

The analysis demonstrates that tattoos must be addressed by legislators through the design of regulatory frameworks that incorporate cultural protection clauses and subject any restriction to a heightened proportionality test. At the same time, such frameworks must preserve the legal status of human beings as subjects of rights, preventing their reduction to the category of contractual objects.

For employers, policies on personal appearance must exclude purely aesthetic or subjective criteria, ensuring that any limitation is directly related to functional suitability and consistent with the principle of non-discrimination. Finally, for cultural institutions, the challenge is to recognize tattoos as expressions of symbolic creativity and identity, integrating them into programmes and policies aimed at protecting cultural diversity. Taken together, these considerations confirm that the regulation of tattooing requires an approach that harmonizes bodily autonomy, freedom of expression, the right to culture, and the principle of equality within the framework of constitutional guarantees.

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