



Human Rights in Theory and Practice

University of Leipzig's 1st International

Summer School on Human Rights Protection under the ECHR



UNIVERSITÄT
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Provisional Program & List of Speakers

International Summer School “Human Rights in Theory and Practice” 2019

1. **Mark E. Villiger** - Art. 46, Binding force and enforcement of ECtHR judgements

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2. **Noëlle Quénivet** – Extra-territorial applicability of the ECHR

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The key concept establishing the applicability of the ECHR in pursuance of Article 1 ECHR is not ‘territory’, but ‘jurisdiction’. Whilst the concept is intrinsically linked to territory, it is not restricted to the territory of the Contracting Parties. Yet, extra-territorial jurisdiction remains exceptional. Underpinning the extraterritorial application of the ECHR is the issue of whether the State is exercising ‘authority’ or ‘effective control’.

In this regard the Court has developed three models of application: (1) personal control, (2) area or spatial control and (3) ‘assumption of authority’ combined with a jurisdictional link. The personal control test relates to the State authority over an individual, the classic example being detention. Pursuant to the spatial control test, the State has to exercise effective control over an area or foreign territory. The significance of this test is that if a State is found to be in effective control of foreign territory, individuals present within that territory fall within its jurisdiction even in the absence of direct contact between those individuals and the agents of the State. That being said, the Court seems to be moving away from the high threshold of the ‘effective control’ terminology under the spatial and personal control tests and to prefer using a combination of ‘assumed authority’ threshold combined with a personal/jurisdictional link. The Court has so far dealt with two examples of situations of ‘assumption of authority’ or ‘assumption of exercise of public powers’. In the first one, such authority was based on the law of belligerent occupation; in the second, it was based on a United Nations Security Council Chapter VII mandate. Even if the ‘assumption of authority’ threshold is crossed, a jurisdictional link still needs to be established.

Whilst the Court initially rejected the idea that the Convention could be divided and tailored depending on the circumstances of the extraterritorial act, thereby seemingly supporting the view that all rights enshrined in the ECHR were applicable in an extra-territorial context, it has in more recent case-law, the Court accepted that Contracting Parties are not bound to secure all fundamental rights and freedoms set out in the ECHR. Examples of rights that must be safeguarded by Contracting Parties are the right to life, freedom from torture, right to liberty and security, right to a fair trial, etc.

If possible: After the presentation students will be provided with a variety of scenarios requiring them to apply the law: does the ECHR apply in the given circumstances? If yes, which rights must be secured? What might be the practical implications for a State in securing these rights?

3. **Nikos Vogiatzis** - Admissibility requirements

Dr.
Lecturer in Law
University of Liverpool

The session will give an overview of key provisions within the ECHR, especially with regard to the following aspects: Victim status and time limits; exhaustion of domestic remedies; Manifestly ill-founded applications; No 'significant disadvantage' suffered; Admissibility requirements and the workload of the European Court of Human Rights; An evaluation of the right to individual application in light of the admissibility requirements

4. ***Kiriaki Topidi*** – The Margin of the Appreciation in the ECHR system: Cultivating Judicial Dialogue in Human Rights

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Senior Lecturer/ Associate Director of the Centre for Comparative Constitutional Law and Religion School of Law of the University of Lucerne, Switzerland

The proposed module will discuss one of the most prominent and dynamic legal constructs in European human rights law: *the margin of appreciation* doctrine as developed by the European Court of Human Rights (ECtHR). The main axis of inquiry of the short module will be the critical examination of the characteristics of the concept as it has been defined in the Court's case law. Designed to allow states room for manoeuvre in the manner in which they apply the ECHR, three aspects of the concept will form the main axes of discussion: the content and function of the doctrine; its origins and evolution; and the critical approaches to its operation and likely future. The module will cover the way the *margin* understood as the discretion given to a government when it evaluates factual situations has shaped the standards of application of the rights contained in the Convention nationally. As importantly, it will be addressed as a practical judicial technique towards deliberation in scenarios of a competing plethora of values. Using examples from the rights to private and family life, the freedom of thought, conscience and religion, the freedom of expression and the freedom of association, the discussion will yield useful comparisons on the variations of the limitations used in the application of the discussed rights on the national level. Originally designed to allow a form of subsidiarity among national systems and by extension protect the inherent socio-legal diversity among Member States to the Convention, the margin of appreciation has also attracted critique. The different approaches and levels to such critique will be discussed in the second part of the module. Scenarios of controversy over interpretative disagreements and distress will emerge. In addition, the *principle of proportionality*, as a counter-tool to the *margin* will be briefly examined as a balancing attempt to restrain the power of state authorities to interfere with the rights of individual. Finally, factors determining the current width of the concept developed so far (e.g. European consensus, rights that are 'fundamental to a democratic society') but also prospects for the concept's future developments will be considered. The ways in which the margin of appreciation may affect the dialogue between national and the European courts in balancing, defending and applying human rights in the European continent will be ultimately explored towards an enhanced protection of human rights throughout our continent in the future.

5. ***Beti Hohler*** - The Role and Impact of ECHR beyond States Parties – The curious case of ECHR in Kosovo

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This presentation – by looking at Kosovo as a case study - explores how the Convention can be integrated into a domestic system of human rights protection without ratification. Kosovo is a territory with a complex legal past, Europe's youngest State (not yet universally recognized) and a non-State Party, where the Convention has been instrumental in defining and protecting human rights and Fundamental freedoms for almost two decades. Kosovo's relationship with ECHR Dates back to 1999, when the Convention was given special consideration by The United Nations Mission in Kosovo (UNMIK), entrusted with administering the territory by the UN Security Council and called upon to define the applicable law in the territory after the armed conflict. Since Kosovo declared independence in 2008, the Constitution makes ECHR and its Protocols directly applicable and, in cases of conflict, gives it »priority over provisions of laws and other acts of public institutions«. The Constitution also

explicitly requires that human rights and fundamental freedoms be interpreted consistently with the decisions of the European Court of Human Rights (ECtHR). The Convention is arguably the most influential amongst the eight international agreements and instruments directly applicable in the territory pursuant to the Constitution. The Convention and ECtHR case law have been regularly cited in decisions of the Kosovo Constitutional Court and general courts at all levels, by local and international panels alike. Moreover, ECHR has been relied upon extensively by the UN Human Rights Advisory Panel (UNHRAP) and the Human Rights Review Panel (HRRP), the two independent accountability bodies with a mandate to review alleged human rights violations by international authorities in Kosovo with executive mandate --- initially UNMIK and since 2008 (also) the EU Rule of Law Mission in Kosovo (EULEX). The presentation will give an overview of the unique legal framework for applying the ECHR in Kosovo without ratification from 1999 to date. It will discuss the case law of the Kosovo Constitutional Court and regular courts with references to ECHR, demonstrating how the Convention is utilized either as a source of law or as a tool for interpreting national statutes. The overview will include a discussion of how utilization of ECHR has evolved over the past 19 years and what, if any, role can be attributed to the involvement of international (since 2008 almost exclusively European) judges and prosecutors in this regard. The emphasis will be on criminal cases where Articles 5 and 6 of the Convention and corresponding case---law of the ECtHR have played a particularly prominent role. Finally, the application and the more prominent cases of UNHRAP and HRRP, discussing ECHR violations, will also be discussed. The presentation will be practice---oriented, focusing on the application of the Convention and related challenges, drawing *inter alia* upon the speaker's own experiences and observations as a former EULEX Legal Officer, working with international judges at the Supreme Court and Appellate Court in Kosovo.

6. ***Edith Wagner*** - The Pilot Judgment procedure

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The ever-growing number of cases at the European Court of Human Rights (ECtHR) is both a blessing and a curse for the Strabourg System. A full docket highlights the importance of the ECtHR, yet challenges its efficiency and effectiveness. While the number of pending cases has been reduced from 151,000 to 63,350 over the course of the last years, the ECtHR's real challenge is still on: so-called repetitive cases that stem from systemic violations of the European Convention on Human Rights.

The failure of many member states to address the root cause of systemic issues like inhuman and degrading conditions of detention or delayed justice requires the ECtHR to invest too many of its limited resources in cases that do not contribute to the further development of the European Convention on Human Rights. Against this backdrop, the ECtHR has experimented with different strategies to manage repetitive cases more efficiently: stricter admissibility rules, new case processing techniques, changes in its institutional design, streamlining of existing and development of new procedures. The proposed lecture provides a comprehensive overview of the ECtHR's procedural efforts for repetitive cases. Its focus will be on the pilot judgment procedure, in particular its development, theoretical underpinning and practical functioning. The first part of the lecture will introduce the participants to the problem of systemic violations of the European Convention on Human Rights and discuss the first pilot judgment in the Broniowski case (application no. 31443/96) to highlight the need for a new procedure for repetitive cases. The participants will look at the creation of the pilot judgment procedure and examine dogmatic questions that have long dominated the academic discussion like the legal basis of the pilot judgment procedure. The second part of the lecture will be dedicated to the practical aspects of the pilot judgment procedure: the selection of the pilot case, the different procedural stages and the treatment of adjourned parallel cases. The participants will also examine the risks of the pilot judgment procedure and discuss the Ivanov case (application no. 40450/04) that is often cited as a failed pilot judgment as it did not help Ukraine to remedy the systemic issue of non-enforcement of domestic court decisions. Last but not least, the participants will get an overview of other non-codified procedures that have received less scholarly attention, but are no less important for the treatment of repetitive cases. The lecture will benefit both from my experience as a trainee at ECtHR and the fieldwork that I have conducted as part of my doctoral research on repetitive cases.

7. **Hans-Joachim Heintze** - Application of IHL and the ECHR

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The application of International Humanitarian Law (IHL) in the European Convention of Human Rights ECHR in the context of armed conflicts is marked by an unstable evolution. This session focuses on the relationship between IHL and the ECHR and the evolution of their application in times of armed conflict. It particularly examines the recent case law of the European Court of Human Rights (ECtHR) in order to ascertain its view on the interaction between ECHR and IHL. The session examines how the ECtHR's case law has recently evolved following the Court's more receptive approach and explicit use of IHL

8. **Noora Arajarvi** - The European Court of Human Rights and War Crimes in the 21st Century

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This session first examines the ECtHR case-law dealing with war crimes, with a brief overview of the Second World War crimes (eg. *Kononov v. Latvia*), followed by the crimes committed during the conflict in the former Yugoslavia in the 1990s (eg. *Jelić v. Croatia*), and then focusing on the ECtHR cases of war crimes committed in the 21st Century. Special focus is afforded to several UK cases involving allegations of war crimes committed by the British military in Iraq. Secondly, the presentation considers the threshold of domestic investigations required to realise the obligation to carry out adequate and effective prosecution arising from Article 2(1) and Article 1 ECHR. The question also bears resemblance to the principle of complementarity in the Rome Statute of the ICC: in the UK, same mechanisms have been utilised with fulfilling obligations under both the ECHR as well as the Rome Statute of the ICC. Notably, many cases, which have been deliberated by the ECtHR, have returned to the UK domestic judicial system on different legal and factual points, or for purposes of reviewing the implementation of the ECtHR judgments (eg. *Al-Saadoon v. 2 Secretary of State for Defence*), resulting in 'judicial dialogue' between the ECtHR and national courts (also *Alseran v. UK Ministry of Defence*). Finally, the presentation sets out different legal and political positions on the ideal breadth of the ECHR, with discussion on the arguments for and against extraterritoriality, the requisite level authority and effective control that gives rise to a duty to investigate ECHR violations, and the applicability of human rights law – in addition to humanitarian law – during armed conflict. Importantly, also the possibility of invoking Article 15 – to derogate from ECHR obligations with respect to military action taken abroad – is discussed.

9. **Sofia Galani** - Terrorism and the European Convention on Human Rights

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This presentation will use terrorist attacks and counter-terrorism responses as a case study to discuss four key issues regarding the interpretation and application of the European Convention on Human Rights (ECHR). Through the examination of landmark cases decided by the European Court of Human Rights (ECtHR), this presentation will first examine the development of positive human rights obligations in the context of terrorism. The obligation of states to take reasonable measures to prevent terrorist attacks; to intervene using proportionate measures and lethal force only as a last resort; to investigate the injuries and killings caused during terrorist attacks and counter-terror operations; and to compensate the victims will be thoroughly examined. The focus of

the presentation will not only be on the protection of the human rights of terrorist suspects, but also on the importance of safeguarding the protection of the victims of terrorism. The analysis of extra-territorial counter-terrorism operations will also allow for a discussion of the extra-territorial application of the ECHR and the duty of states to comply with human rights when they act beyond the Council of Europe borders. This first discussion of the positive human rights obligations of states in the context of terrorism will lead into the discussion of the margin of appreciation and state of emergency cases in response to terrorist threats. By drawing on examples from recent terrorist attacks in Europe and relevant case-law, this presentation will shed light on cases in which states can rely on the margin of appreciation or derogate from the Convention while responding to terrorism. Overall, the presentation will be aimed at offering an in-depth account of landmark cases of the ECtHR regarding terrorism and counter-terrorism responses that will enable the participants to grasp basic legal issues in relation to the ECHR while also engaging with topical issues of primary importance.² It could also be split into two presentations covering 1) core issues relating to positive human rights obligations and the extra-territorial application of the ECHR and 2) the margin of appreciation and state of emergency cases in the context of terrorism.

10. **Laura Pelucchini** - Rejections (“push-backs”) at the EU external borders in the light of the ECHR: The Italian Case.

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It has been a long time since the European legislator has adopted the so-called principle of *non-refoulement*, firstly emerging from the conjunction of article 33 of the Geneva Refugee Convention of 1951 and the Schengen Borders Code (art. 3 and 3a). The European Court of Human Rights confirmed that the rejections/push-back practice of migrants at the external borders of the European Union is unlawful. Recently, this principle has been affirmed in the “*N.D. and N.T. v. Spain*” case, issued on October 2017. In its reasoning the ECtHR has, in fact, found the violation of article 4 Protocol 4 (Prohibition of Collective Expulsions) and article 13 of the European Convention of Human Rights (Right to an effective remedy to be used in case of a violation of rights and freedoms affirmed in the Convention itself). Even if addressing to the resolution of single and individual cases, the ECtHR’ jurisprudence in this specific field has proved to have a wider effect and impact, considering that these decisions do not only affect domestic border regimes of Member States. They also apply to the external common borders of the European Union when it comes to state a violation of human rights.

One of the country which seems to be most concerned about push-back cases – probably because its geographical location in the very centre of the Mediterranean sea – is Italy. Starting with the “*Hirsi Jamaa and Others v. Italy*” case of 2012, the ECtHR has recognized a violation of art. 3 and 13 ECHR and art. 4 Prot. 4 in the Italian decision of transferring about 200 migrants to Libya because it exposed the applicants to the risk of *refoulement*.

11. **David Hummel** – Ne bis in idem idem in taxation cases before European Courts

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In the last time more and more preliminary rulings are dealing with the problem of the combination of criminal penalties and administrative penalties. Especially in VAT-law it is a big issue because there is no doubt that the Charta of fundamental freedoms is applicable. In a few member states the administrative penalty is more than 100% of the owed tax. Is a criminal penalty of 100% of the owed tax years later not a problem with the “ne bis in idem” principle?

Therefore the European Court of Justice (ECJ) got a few questions with which the referring courts asked, in essence, whether Article 50 of the Charter, read in the light of Article 4 of Protocol No 7 to the ECHR, must be

interpreted as precluding national legislation in accordance with which criminal proceedings may be brought against a person for failing to pay VAT due within the time limit stipulated by law, although that person has already been made subject, in relation to the same acts, to a final administrative penalty. In the *Menci* case (Decision of 20.3.2018 – C 524/15 – *Menci* – ECLI:EU:C:2018:197) the ECJ developed its jurisprudence, which is very strict in regard to Article 50 of the Charter. In general there is no problem with the “ne bis in idem” principle in VAT-cases.

At the same time the European Court of Human Rights (EuCHR) is also dealing with similar questions. In the judgements of 15.11.2016 – *A and B vs. Norway* (Grand chamber) - Applications nos. 24130/11 and 29758/11 and of 18.5.2017 - *Johannesson a.O. vs. Iceland* (1st section) - Application no. 22007/11 it developed its own approach. Especially it decided that, having regard to the circumstances, in particular the limited overlap in time and the largely independent collection and assessment of evidence, the Court cannot find that there was a sufficiently close connection in substance and in time between the tax proceedings and the criminal proceedings in the case for them to be compatible with the “bis” criterion in Article 4 of Protocol No. 7.

In the end there are two different approaches, on which one has to take a closer look. Maybe there are some differences in the reasoning and in the results that lead to interesting questions. What is the right approach (maybe there is a third solution?) and who has the “last word” in this point – the ECJ or the EuCHR?

12. ***Brice Dickson*** - The right under the ECHR to ‘adequate’ prosecution and law enforcement systems in cases of death and ill-treatment

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The presentation explores whether and, if so, to what extent the ECHR already confers a right to adequate prosecution and law enforcement systems in situations where protection of the right to life or the right not to be ill-treated is at stake. The European Court’s jurisprudence is not as clear as it could be on this topic. The case law on the right to an adequate *investigation* in Article 2 and 3 situations is well-established, largely as a result of cases brought from Northern Ireland and Turkey. But although the Court has long required States to have in place effective criminal law provisions backed up by law-enforcement machinery it has not been very specific on that point. As regards prosecution systems, the Grand Chamber’s decision in *Armani da Silva v UK* (2016) suggests that in that domain too the Court is prepared to accord States a wide margin of appreciation. There is also continuing uncertainty as to when exactly a State will be held to have ‘jurisdiction’ under Article 1 of the ECHR in relation to alleged killings or incidents of ill-treatment which occur outside of the State’s territorial boundaries. Prosecution is a process which falls midway between the processes of investigation and trial. In common law countries it tends to be kept strictly apart from those processes, but in civil law countries the lines between all three processes are more blurred. In each type of legal system, however, prosecution is essentially a State-led process, so whenever an official or minister acting in the State’s name is the potential target of a prosecution it becomes all the more important that prosecutorial decisions are taken in an independent and reviewable manner. Once a prosecution has begun it must comply with standards laid down under Article 6 of the ECHR, but the extent to which Article 6 applies to the procedures involved in deciding whether to initiate a prosecution in the first place is still debateable. Standards laid down under Articles 2, 3, 7, 8 and 13 of the ECHR should be relevant in this context too.

The session will review the relevant Strasbourg jurisprudence and discuss what limits, if any, should apply to the ECHR’s involvement in the way a State operates its prosecution and law enforcement systems. It will look in particular at the relationship between protecting human rights and enforcing the criminal law, asking such questions as: Does the victim of an assault, or his or her family, have a Convention right to have someone prosecuted for that assault? Does the right under Article 13 of the ECHR to an effective remedy for a breach of Convention rights include the right to have someone prosecuted in relation to that breach? To what extent should States be allowed to refuse to prosecute someone on grounds of public interest? How far should States be permitted to go in involving victims of a breach of Article 2 or 3, or their families, in prosecutorial and law enforcement decisions relating to that breach? In attempting to answer these questions the paper will occasionally draw for comparative purposes on the case law of the Inter-American Court of Human Rights and on human rights standards set out in documents issued by bodies within the United Nations.

13. ***Ilja Richard Pavone*** - The case-law of the European Court of Human Rights in the field of bioethics

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The last decade has registered several rulings of the European Court on Human Rights (ECtHR, Strasbourg Court) on matters related to bioethics, ranging from the beginning of life (legal status of the human embryo) to the end of life issues (euthanasia). Indeed, the Court has been increasingly involved in the last few years with topics related to reproductive rights (prenatal diagnosis and the right to abortion), access to artificial procreation techniques (pre-implantation genetic diagnosis, heterologous fecundation), consent to medical examination or treatment of detainees, HIV/AIDS, access to biological data and the right to know one's biological identity, transgender issues, active and passive euthanasia and assisted suicide.

These complex problems are increasingly being raised before the Strasbourg Court by invoking most often breaches of Article 2 (right to life), Article 3 (prohibition of torture, and inhuman or degrading treatment or punishment), Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the ECHR. The Court, in particular, has relied on the norms of the European Convention on Biomedicine and Human Rights (Oviedo Convention) as the main interpretation tool of the human rights contained in the ECHR. This presentation will provide first a short description of landmark cases dealt by the ECtHR, such as, for instance, *Vo v. France* (on the legal status of the unborn baby); *Costa and Pavan v. Italy* (on the access to pre-implantation genetic diagnosis); *Sh v. Austria* (on the access to heterologous fecundation); *Evans v. United Kingdom* (on the property of frozen embryos); *Garçon and Nicot v France* (requirement of sterilization before legal procedure of gender reassignment); surrogacy (*Paradiso and Campanelli v. Italy*); *Pretty v. United Kingdom* and *Koch v. Germany* (assisted suicide and right to die); *Lambert and others v. France* (right to refuse a medical treatment). Secondly, it will evaluate the impact of these judgments at domestic level: how did States implement ECHR judgments? Did they modify their national laws accordingly? Some case studies will be provided (i.e. Italy and the Law No. 40/2004 on medically assisted procreation).

Lastly, it will provide some reflections on the role of the Strasbourg Court in shaping a common European bioethics through the interpretative support of the Biomedicine Convention. Therefore, it will be discussed if (and to which degree) the case-law of the ECtHR in this field has influenced domestic policies and laws on bioethics and has standardized domestic legislations. Therefore, it will be evaluated whether these judgments are contributing to the advancement of human rights in the field of bioethics (through an extensive interpretation of ECtHR rights), or whether States still enjoy a wide margin of appreciation that hinders further advancements.

14. ***Monica Cappelletti*** - Harmonising fundamental rights and data protection rights in public security sector in Europe

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At the European level, in the criminal and judicial matters cooperation, the European Union has been defining common standards to guarantee the effective protection of fundamental rights since 2008. The Prüm Decision (Dec. 2008/977/JHA) set specific rules in order to collect, retain and share among Member States genetic information. However, the Directive 2016/680 has changed and extended this paradigm. Firstly the Directive applies to broader purposes (prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties); secondly, it concerns all types of personal information, not only genetic one. In this new legal framework (the Directive came in force in May 2018), it has been delineating an innovative approach to protect fundamental rights and, specifically, data protection rights according to article 8 EU Charter.

The European Union is imposing a common and harmonised standard of guarantee in traditional “national” sector, the public security one. Moreover, the ECJ has been intervening in this field as well (Digital Rights Ireland and Tele 2 and Watson cases, and pending case C-207/16) in the limitation of actions of the Legal Enforcement Agencies. However, considering the ECHR jurisprudence, it is worthy highlighting how the ECHR jurisprudence has traced common parameters in criminal matters regarding the respect of fundamental rights of individuals, specifically protecting private life right and data protection rights. In a comparative perspective, the speech aims at analysing the new legal framework derived from the Directive and the ECHR jurisprudence in order to verify the harmonisation level in the public security sector to guarantee fundamental rights of the individuals and how mutual and reciprocal influences among Courts (ECHR and ECJ) are defining a regional and potentially global standard. Again, in 2014, the ECtHR returned to the matter and condemned Italy for the violation of the very same articles in the “*Sharifi and others v. Italy and Greece*” case. Here the rejection was directed to another Member State (from Italy to Greece), nevertheless the Court concluded that immediate returns had to be qualified as “collective and indiscriminate expulsions” (prohibited under art. 4 Prot. 4). Lately (May 2018), Italy has been accountable, in front of the European Court, for the Libyan Coast Guard interventions under the bilateral “migrants push-back deal”. That said, this presentation seeks to study and present in detail the above-mentioned cases, because of their importance and specificity in the European panorama. A special focus will be also on the impact that ECtHR decisions had on national legislation and jurisprudence. Analyzing those Italian paradigmatic cases seems, in fact, to be helpful in understanding the ECtHR reasoning and juridical developing when it comes to decide about rejections at the EU external borders in the light of the ECHR. Moreover, those decisions disclose not just the current state of the art: future scenarios and evolution can be already be read between their lines.

15. ***Helga Molbæk-Steensig*** - From draft to declaration: Legal and political motivations behind the Copenhagen Declaration and The resulting planned reforms of the European Convention on Human Rights

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The idea behind this session is to facilitate a debate on the political control with the court along with an overview of the reform process up until now as well as what can be expected following the Copenhagen declaration. This session will consist of two main themes: The drafting process and the reform programme. The first part will deal with the political motivation behind the draft Copenhagen declaration and the role of academics, lawyers, civil servants, and human rights advocates in the development from political idea to draft declaration and the influence of international relations in the development from draft to final declaration. The second part will look into the reform process from Interlaken to Copenhagen. This session will build upon session 3, discussing practical issues of backlog of cases, political issues relating to implementation and compliance and the normative discussion on subsidiarity and democratic mandate. We will include theoretical insights from the field of Global Governance.

16. ***Alain Zysset*** - The ECtHR and Proportionality: Theory and Practice

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The objective of this presentation is to introduce and critically appraise the test of proportionality used by the ECtHR. The presentation aims both to equip students with some theoretical background on the concept and function proportionality and to analyze the practice of proportionality in Strasbourg. The presentation will be three pronged. First, it will examine the nature and role of proportionality across domestic and international jurisdictions (Barak 2012, Möller 2012, Kumm 2010). More precisely, it will identify the core steps of the test and their underlying deontological/utilitarian/empirical principles and then illustrate these principles in the German constitutional context with the “feed the pigeons the park” example at the Federal Constitutional Court (FCC). Second, it will explore the proportionality test of the ECtHR specifically, in two steps. On the one hand, it will introduce the

particular three-step process (“prescribed by law”, “legitimate aim” and “necessary in a democratic society”) and then survey the application of the test to the “derogable” rights (Art. 8-11). The examples of Article 10 (expression) and Article 8 (privacy) will be explored in greater depth. On the other hand, the presentation will examine how different the structure and the practice of the Strasbourg test compares to the domestic case. Here, the margin of appreciation doctrine, and how it affects the proportionality tests (in particular, the “better placed” argument) will be specifically addressed. Third, the presentation will engage with students in critically assessing the proportionality test of the ECtHR. It will focus on a notorious case before the ECtHR, *Van Hannover v. Germany* (2004, 2012), which examines the deep conflict between freedom of expression and the right to privacy. The last step of balancing will be explored in greater depth to test the students’ knowledge and intuitions. The pedagogical goal here is to place students within the constraints imposed by the proportionality test and the constraints of a European judge (e.g. subsidiarity).

17. **Antonietta Elia** - Freedom of Expression and Freedom of Religion and Belief

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The present proposal aims to clarifying the substance of freedom of expression and freedom of religion respectively. However, based on the principle of interdependence of rights, it try to introduce a definition of legitimate limits to freedom of expression included in article 10 of the ECHR as interpreted by the Court. At the same time to put the accent on when those limits are related to freedom to express religion. The module will try to offer a substantive view of the related guarantees to articles 9 and 10 of ECHR, in order enable the audience to distinguish if such limits at internal level are compatible or not with the ECtHR standards.

18. **Zane Ratniece** - Rule 47 of the ECtHR Rules – *Taking a Case to Strasbourg*

Legal Officer, Constitutional Court Chamber,
Kosovo Specialist Chambers,
The Hague, the Netherlands

The new Rule 47 of the ECtHR Rules came into force on 1 January 2014, marking an important shift in the practice of the Strasbourg Court. It introduced a standard ‘application form’ and determines what constitutes a valid application. As noted by the Grand Chamber in *Radomilja and Others v. Croatia*, a failure to comply with this Rule may result in the application not being examined by the Court. In such a case, an application may be rejected merely on ‘administrative grounds’, without being referred to a judge. Furthermore, the running of the six-month period for lodging an individual application is interrupted only when an applicant sends to the Court a properly completed application form. In this vein, Rule 47 cannot be disassociated from admissibility criteria. At the outset, the presentation outlines briefly the related process on the long-term future of the Convention system and how the new Rule 47 aims to increase the Court’s efficiency and safeguard its long-term effectiveness. The presentation then analyses how the revised Rule 47 has in practice affected individuals in the exercise of the right of individual application. In this regard, it emphasises the Court’s own approach to application of Rule 47. Its decision in *Malysh and Ivanin v. Ukraine* reveals that the Court has taken a strict approach to application of the new requirements, which underlines the importance of Rule 47 in bringing a case to Strasbourg. In this connection, the presentation shows how, prior to amendments to Rule 47, the six-month period under Article 35 § 1 of the Convention could be interrupted by a simple communication from the applicant, and how after those amendments only a duly completed application form interrupts the applicable period. The presentation then focuses on concrete requirements of the new Rule 47, including changes that came into force on 1 January 2016. It also guides the participants of the Summer School on how to complete an application form to ensure its compliance with Rule 47, avoiding most common mistakes. It also discusses situations in which an application that does not comply with the Rule may still be referred to a judge. In particular, this applies to very exceptional cases, requests for interim measures and when an applicant provides adequate explanation for not complying with Rule 47. Overall, the presentation aims to equip the participants of the Summer School with the knowledge and practical skills concerning the application of Rule 47. At the same time, it invites the participants to look at

these practical aspects of Rule 47 against broader considerations, such as the reform of the Court, judicial activism and effective protection of human rights.

19. **Veronika Bilkova** - Article 10 and the Protection of Dissidents and Whistleblowers

Head of the Centre for International Law
Institute of International Relations, Prague

The presentation discusses the legal regime that the ECHR and other international instruments create for human rights defenders (dissidents) and whistleblowers. The two categories are different in terms of their activities and the context in which they operate. What they share however is first, that they contribute to the monitoring of how human rights are implemented and respected in practice, drawing attention to cases of serious and/or systematic human rights violations, and, secondly, that due to their activities, they are in need of an enhanced human protection. In its first part, the presentation discusses the conditions under which an individual (or an organization) becomes a human rights defender or a whistleblower, and the risks that such statuses entail, especially the risks for the individual's (or NGO) human rights.

The second part of the presentation concentrates on human rights defenders. It introduces international instruments that deal with this category specifically, such as the *UN Declaration on Human Rights Defenders* adopted by the UN General Assembly in 1999 and the 2006 *EU Guidelines on Human Rights Defenders*. It then moves to the protection granted to human rights defenders – both individuals and non-governmental organizations – under Article 10 of the ECHR. Using the relevant ECHR case-law (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina*, *Altan v. Turkey* but also *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, etc.) and some of the opinions of the Venice Commission (on Azerbaijan, Hungary, Poland, Russia or Turkey), the presentation identifies standards applicable to human rights defenders under Article 10 of the ECHR. It moreover shows that human rights defenders are often exposed to a complex campaign interfering not only with their freedom of expression but also with a host of other human rights (freedom of association, the right to privacy, the right to liberty, even the right to life and the prohibition of torture).

The third part of the presentation deals with the protection of human rights of whistleblowers. Drawing on the 2015 *Report of the Special Rapporteur to the UN General Assembly on the Protection of Sources and Whistleblowers*, the case law of the ECtHR (*Guja v. Moldova*, etc.) and the opinions of the Venice Commission (Opinion 829/2015, etc.), the presentation seeks to identify the main principles that should guide states adopting legal acts on whistleblowing, again showing that the issue has a much wider scope than that falling under Article 10 of the ECHR.

The main purpose of the presentation is to help students understand who human rights defenders and whistleblowers are, what their specific role in the human rights area is and how human rights standards and national legal orders should reflect this role.

20. **Felix Hanschmann** – The Rights of Children in the European Convention on Human Rights

Prof. Dr. Felix Hanschmann,
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The European Convention on Human Rights does not contain any explicit rights for children. However, according to Article 1 of the Convention the High Contracting Parties shall secure the rights guaranteed by the Convention to "everyone within their jurisdiction". Because some of these rights have a special relation to the particular interests of children and adolescents, it is not surprising that numerous decisions of the European Court of Human Rights are concerned with the protection of younger people. The focus is not only on the right to respect for private and family life according to Article 8 ECHR, which concerns in particular matters of family reunion and the related claim to the granting of residence permits or the right to know one's own descent. Eminent importance for children and young people bears also the freedom of thought, conscience and religion under Article 9 of the ECHR as well as the right to education from Article 2 of the First Additional Protocol to the ECHR.

Wearing religious symbols at school, taking part in religious education or the necessity of offering ethics courses in schools, the question of homeschooling, dis-crimination against certain groups of pupils in the education system of some Contracting States, the content of schools curricula, the violation of state protection obligations in cas-es of domestic violence and physical and/or sexual abuse or compulsory labor are only a few aspects the Court has dealt with in its jurisprudence in the past. By discussion these cases the lecture attempts to clarify the sensitivities the ECHR is able to develop for the specific vulnerability of children and adolescents.

21. **Robert Frau** - Freedom of Religion

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Religion is an emotional issue for religious and non-religious people alike. Many aspects of the exercise of religion have the potential to raise and have actually raised societal problems. In this presentation, we will focus on several of those issues, starting with the question what a “religion” in the case law of the ECtHR is, what kinds of behavior are protected under Art. 9 ECHR, how this freedom is infringed in practice and how violations may be justified. We will address the relevant case law and will discuss some case studies.

22. **Samantha Knights** - Taking a case to the ECHR

Barrister and Queen's Counsel at Matrix Chambers, London/
Visiting Professor at University of Miami. School of Law

To make an Application to the European Court of Human Rights is not straightforward and it can take years for a case to be heard. But, for many, it is the last chance to see justice done. Whether for or against the controversial influence that the European Court of Human Rights has, it is the last possible stage of appeal having gone through the domestic legal system to prevent or remedy a human rights violation. This presentation shows how to apply to the court step-by-step and directs you to the relevant resources available. Why make an application to the European Court of Human Rights? What must I do for my case to have a chance of success? What are the incentives for bringing a case to this court? What remedies can I get? These and other questions will be answered by the presentation.

23. **Jacopo Roberti di Sarsina** – Criminal Law and procedural aspects – Is there a claim for “adequate” national prosecution and law enforcement from Article 2 (1) and Article 1 ECHR?

Dr. MA, LL.M.
Attorney at Law Italy and NY

By analyzing the provisions in which the obligations to investigate and prosecute are enshrined or derived, this presentation disentangles the common misconception that such “procedural” obligations are naturally rooted and clearly spelled out in the ECHR and clarifies whether a claim for “adequate” national prosecution is warranted. While several human rights treaties require States parties to criminalize specific human rights violations and establish specific obligations, like the other general human rights instruments, the ECHR does not enshrine an explicit obligation to investigate, prosecute and punish those responsible for violations of the rights enumerated under Articles 2-14 ECHR. Nonetheless, mainly in its jurisprudence relating to infringements of the inherent right to life (art. 2), freedom from torture (art. 3), right to liberty and security (art. 5) and right to private life (art. 8), the ECtHR has insisted that States parties have not only the negative duty to refrain from violations but also positive obligations to enact and enforce effective criminal law provisions, prevent violations from occurring, conduct effective criminal investigation into serious human rights violations, bring to justice the culprits, and remedy breaches. These “procedural” obligations will be mainly discussed by the presentation.

24. *Paula Gorzoni* – Theory of principles and the Principle of proportionality

Dr. Paula Gorzoni
Ph.D. in Law at the University of Kiel, Germany
Independent Consultant & Researcher | Lawyer | Lecturer
Human Rights and Governance

The presentation will address the question how the theory of principles can be applied in the context of proportionality in order to provide structured solutions for the development of consistent criteria while defining the margin of appreciation. For this objective, I will present the basis of the theory of principles and the principle of proportionality, types of discretion, the possibilities of the theory application and examples of cases. For that reason, my presentation would be also about the argumentation of the court and its case law.

25. *Stefanie Lemke* – Richterliche Unabhängigkeit und Art. 46

Dr. iur.
University of Oxford, Centre for Socio-Legal Studies, Faculty of Law, Research Fellow
International Scholar and Advisor on the Protection of Human Rights and the rule of law

Mein Vortrag geht der Fragestellung nach, auf welche Art und Weise die Urteile des EGMR im jeweils betroffenen Mitgliedsstaat effektiv umgesetzt werden können, wenn dort die Unabhängigkeit der Richterschaft nicht gewährleistet wird. Nachdem der Vortrag die Verbindlichkeit und Durchführung der Urteile des EGMR nach Artikel 46 EMRK erörtert und die Kriterien, die eine unabhängige Richterschaft ausmachen, gibt der Vortrag den Teilnehmer*innen einen kurzen Überblick über den status quo richterlicher Unabhängigkeit in den Mitgliedsstaaten des Europarats. Anschließend wird anhand von Fallstudien untersucht, auf welche Art und Weise die politische Einflussnahme auf die richterliche Unabhängigkeit die Umsetzung der Urteile des EGMR in den Mitgliedsstaaten erschwert hat.

26. *Hanaa Hakiki* - 'Push Backs' at EU external borders

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27. *Carlos Espaliú Berdud* - Slavery, Forced Labour and Human Trafficking within the framework of the Article 4

Prof. Dr. Carlos Espaliú Berdud
Professor of International Law and European Law
Investigador principal del Grupo de Investigación en Seguridad, Gestión de Riesgos y Conflictos (SEGERICO)
Departamento de Relaciones Internacionales
Universidad Nebrija, Madrid

28. *Dominik Steiger* – Influencing elections and the freedom of speech

Prof. Dr.
Chair of Public International Law, European Law and Public Law
Technische Universität Dresden, Dresden

29. *Helen Keller* – How to bring a case to the ECHR

Prof. Dr.
Chair for International law, European and Public Law
University of Zürich, Suisse
Judge at the ECtHR

30. Dirk Hanschel

Prof. Dr.
Chair for German, European and Public International Law
Martin-Luther-Universität Halle

31. Andreas Kulick – Companies and the European Convention on Human Rights

Dr. LL.M. (NYU)
Eberhard Karls Universität Tübingen

32. Valeria Eboli – Positive Obligations under the ECHR

PhD, LL.M.
Consultant at the Institute of International Legal Studies of the National
Research Council of Rome

33. Theresa Napolitano - Human Rights aspects of asylum and refugee law and processing

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