

EUROPEAN YEARBOOK ON HUMAN RIGHTS 2022

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**VIENNA FORUM FOR
DEMOCRACY AND HUMAN RIGHTS**



EUROPEAN YEARBOOK
ON HUMAN RIGHTS 2022

Edited by
Philip CZECH
Lisa HESCHL
Karin LUKAS
Manfred NOWAK
Gerd OBERLEITNER



INTERSENTIA

Cambridge – Antwerp – Chicago



Vienna

Intersentia Ltd
8 Wellington Mews
Wellington Street | Cambridge
CB1 1HW | United Kingdom
Tel: +44 1223 736 170
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

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EDITORS' PREFACE

Dear readers,

We are living in a state of multiple crises: an obvious but still neglected climate crisis; a health crisis with an ongoing pandemic; an economic and financial crisis closely related to an energy crisis; and a human security crisis reflected in the many violent conflicts, new and long-lasting, around the globe. Responses to crises are often emotional, populist and fear-induced. In order to maintain and solidify their power and pursue their interests, governments tend to use crises to create a permanent state of exception, legitimating measures that under 'normal' circumstances might have been unthinkable. On the other hand, crises unsettle people – people lose trust in political systems, the media or the rule of law in general. Human rights and violations thereof are at the core of these dynamics; ultimately, crises are a symptom of the fragility of the human rights system, and the disregard by states of rights commonly agreed upon by the international community. At the same time, the doubts about institutions, democratic systems and the rule of law are also an expression of a lack of trust in human rights. What we need, thus, is to regain control over the human rights discourse, in order to be able to respond profoundly to the violation of human rights, and to re-establish trust in them, and the system established to implement them, by showing that human rights are more than just written words. As a platform for the discussion of important and topical human rights issues, the European Yearbook on Human Rights 2022 aims to make a contribution towards ensuring that future responses to crises not only pay respect to human rights but are rooted in them. Differently from the previous editions, which were dedicated to specific topics (the 2021 edition was dedicated to 'Human Rights in Times of a Pandemic', and the 2020 edition to the rights of the child), the EYHR 2022 takes a broad approach to various topical human rights issues in Europe and beyond.

In its first part, the volume covers current human rights developments in the EU, starting with a contribution by Marguerite Arnoux Bellavitis and Martina Sardo on 'New EU Funds, Migration and Protection of External Borders: What Place for Human Rights?'; questioning the practice of using EU funds for migration control practices in third countries that violate human rights. Migration remains high on the political agenda, and the access to the EU, and to protection, has been widely discussed in recent years. Emiliya Bratanova van Harten goes beyond questions related to entry and expulsion, in her contribution, and focuses on refugees who have already received a status in the EU. In 'Refugee Integration in European Human Rights Law and EU Law: A Right to Be Integrated?', she asks

whether there is a state obligation to provide integration support for refugees, and whether a right for refugees to be integrated can be deduced from European legal sources.

The following two contributions both deal with the right to have access to justice, and to enforce individual rights. Delia Ferri and Léa Urzel, in their contribution, 'The Employment Equality Directive and Access to Justice for Persons with Disabilities: Reflections in Light of *Tartu Vangla* and *Komisija za Zashitita ot Diskriminatsia*', address access to justice deriving from the rights of persons with disabilities within the work environment. Valentina Golunova and Eline Labey, in their contribution, 'Judges of Online Legality: Towards Effective User Redress in the Digital Environment', approach enforcement from a very different perspective, leaving the 'offline' world by examining the evolution of user redress mechanisms from a European perspective, focusing on the EU Digital Services Act.

Remaining in the field of the judiciary, and the guiding principles regarding the rule of law and the right to a fair trial, Nasiya Daminova's contribution, 'The CJEU Faced with "Presumption of Innocence" Directive 2016/343: Reshaping the ECHR Standards?', analyses how the presumption of innocence, as a key guarantee for fair trials, and a precondition for the integrity of (supra)national judicial systems, has been perceived by the CJEU, and how the judicial dialogue between the ECtHR and the CJEU has evolved over the years in this matter.

The last contribution in the EU section explores the EU's human rights responsibilities beyond EU territories in its external relations. Elisabeth Hoffberger-Pippan and Stuart Casey-Maslen, in their contribution, 'The EU's Role in Addressing Human Rights Violations in Hong Kong: Realistic Expectations or Pie in the Sky?', call on the EU Member States to act as a credible and potent human rights advocate beyond its own borders, by exploring the circumstances, limits and constraints to a Member States-promoted initiation of proceedings against China before the International Court of Justice, for the violation of human rights in Hong Kong.

In its second part, the EYHR 2022 turns to the human rights developments within the framework of the Council of Europe. Domestic abuse has always existed. However, since the outbreak of COVID-19, emerging data has shown that violence against women and girls, and particularly domestic violence, has intensified. Ronagh McQuigg, in her contribution, 'The Evolving Jurisprudence of the European Court of Human Rights on Domestic Abuse', discusses the ways in which domestic abuse has been addressed by the ECtHR in its jurisprudence, and how its conceptualisation by the Court has evolved over the years.

Technological developments and the galloping progress of inventions make it hard for law-makers and the judiciary to keep pace. Alessandro Mantelero and Francesca Fanucci, in their contribution, 'The International Debate on AI Regulation and Human Rights in the Prism of the Council of Europe's CAHAI: Great Ambitions', shed light on the complicated process of developing binding

provisions on AI by using the CoE's Ad hoc Committee on Artificial Intelligence (CAHAI) as an example. Technologies, the Internet, and, specifically, social media gain more and more relevance in the work of the ECtHR, both from a substantive, and from a procedural perspective. Francesco Luigi Gatta, in his contribution, 'Human Rights and Social Media: The European Court of Human Rights in the Digital Era', examines the different aspects of how social media and the Internet impact on the work of the Court.

One cornerstone of every democratic society is the right to express one's thoughts and opinions freely. While, in European societies, freedom of expression is often taken for granted, the following two contributions deal with restrictions of this core right in particular cases. Jasper Van Steenberg, in his contribution, 'The Freedom of Expression of the Judiciary as a Special Case of State Personnel: A European Human Rights Perspective', by analysing the case law of the ECtHR, examines how the general ethical duties of civil servants, such as the duty of loyalty, discretion and (political) neutrality could be applied in the case of the judiciary, and justify restrictions on the right to freedom of expression. Helen Fenwick turns, subsequently, in her contribution, 'Exploring Narratives about "Cancel Culture" in UK Educational/Employment Settings under the ECHR', to a hotly debated topic, namely how educational institutions like universities have difficulties in balancing the right to free speech and the interests of minorities and marginalised groups not to be confronted with opinions that may denigrate them.

Harriet Ní Chinnéide, in her contribution, 'Consistency, Coherence and the Turn Towards Procedural Review in the European Court of Human Rights', reflects on 'the procedural turn' taken by the ECtHR, which, according to the author, has begun to vary the intensity of its review based on the quality of decision-making by both domestic courts and national parliaments. The next contribution also deals with a procedural aspect of cases decided by the ECtHR, more specifically with the execution of judgments. Agnieszka Szklanna, in her contribution, 'The Execution of ECtHR Judgments Related to Inter-State Disputes', examines, in depth, the problematic execution of judgments in cases between states, or related to inter-state disputes. National Human Rights Institutions (NHRIs) can play an important role in the context of executing judgments. Elif Erken, in her contribution, 'Lessons from the Inter-American Human Rights System to Further Utilise the Potential of NHRIs in the European Convention System: From Contextualisation to Inspiration?', shows which lessons can be learned in this regard from the Inter-American Human Rights System, and promotes the effective and full utilisation of NHRI potential in the European Convention system.

The rights under the ECHR are not absolute but can be limited under certain circumstances. Emre Turkut, in his contribution, 'The Turkish Post-Coup Emergency and European Responses: Shortcomings in the European System Revisited', addresses state derogations from the ECHR, using the example of

Turkey, criticises the fallacies of the contemporary European derogation regime, and proposes a road map for future improvement. Subsequently, Paula Rhein-Fischer, in her contribution, 'Militant Democracy in the ECtHR Case Law on Genocide Denial Bans', examines the question of how the ECtHR has been dealing with the restriction of rights of 'enemies' of democracies, in the context of memory laws and genocide denial.

Access to information and research is crucial for informed decisions, and to re-establish trust in institutions, the rule of law and democracy as a whole. Ludovica Paseri, in her contribution, 'From the Right to Science to the Right to Open Science: The European Approach to Scientific Research', makes a strong case for the need to make research freely accessible for everybody, to guarantee the maximum sharing of knowledge while protecting the rights of individuals.

The struggle to accommodate the specific needs of minority identities with general rules and practices arises most prominently with regard to the freedom of religion and its scope. Adelaide Madera, in her contribution, 'Religious Accommodation before the European Court of Human Rights: Moving Forward a New Approach Towards Religious Minorities?', addresses how the ECtHR has been dealing with the concept of 'reasonable accommodation', using cases concerning the freedom of wearing religious attire in the courtroom as an example.

Leaving the EU and the CoE behind, Part III of the EYHR 2022 deals with recent developments in the fields of human rights beyond European borders. Rachel Murray, Jennifer Roberts and Andrea Huber, in their contribution, 'Practical Perspectives of Universal Jurisdiction in the OSCE Region: Factors to Ensure Accountability of Perpetrators for Torture', deal with the crucial question of how perpetrators of torture and inhuman treatment may be held accountable, focusing on key factors for successful litigation in practice, using universal jurisdiction, and referencing cases in OSCE participating states.

Universities play a crucial role for the protection of human rights. They are hubs for free exchange and analysis, create new generations of change-makers, and contribute to protecting democratic values. Imke Steimann, in her contribution, 'The Human Rights Agency of Universities: A Case Study on the Crisis in Afghanistan', uses the takeover by the Taliban in Afghanistan, in 2021, as a case study to analyse the developing role of universities as human rights actors and their evolving self-understanding, including increasing human rights agency in a progressively challenging political climate.

The climate crisis affects the whole globe, and omissions of the past will particularly impact on upcoming generations. However, as Margaretha Wewerinke-Singh and Zoe Nay, in their contribution, 'Climate Change as a Children's Rights Crisis: Procedural Obstacles in International Rights-Based Climate Litigation', conclude, those who are most affected by the climate crisis do not have possibilities to claim their rights, nor do they have sufficient access to justice.

Turning to the local level, by using the example of the deterioration of the housing sector, Livia Perschy, in her contribution, 'Mitigating Human Rights Challenges by Fostering Urban Resilience: A Case Example of Graz, Austria', makes a case for the need to strengthen human rights at the local level, in order to strengthen the abilities of local governments to respect and respond to the varying and often complex needs of citizens.

In line with the tradition of the EYHR, Part IV is dedicated to important guiding jurisprudence in the field of human rights, by the ECtHR and the CJEU. Christian Breitler and Lorenzo Acconciamezza have taken up the challenge of identifying the most significant judgments by the European Courts, providing a detailed account of the growing corpus of human rights jurisprudence in Europe.

The EYHR 2022 concludes with a section consisting of book reviews, highlighting recent publications in the field of human rights.

Times like these require increased efforts to uphold and ensure the protection of human rights. The editorial team of the EYHR, composed of the European Training and Research Centre on Human Rights and Democracy of the University of Graz (UNI-ETC), the Austrian Human Rights Institute of the University of Salzburg, the Global Campus of Human Rights Venice, and the Vienna Forum for Human Rights, would like to thank all our authors and reviewers for joining us in taking up this challenge. Our particular gratitude goes to the Global Campus of Human Rights for its financial support, which makes this publication possible. Many further thanks go to Agnes Romanin, Sophia Urban and Kirsten Reiterer for their excellent work and support. And, lastly, particular thanks go to Ahmed Hegazi and the wonderful Rebecca Moffat from Intersentia for their constant support, availability and flexibility during the whole publication process.

Graz, Salzburg, Vienna, Venice – August 2022

Lisa Heschl, Philip Czech, Karin Lukas,

Manfred Nowak and Gerd Oberleitner

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LIST OF ABBREVIATIONS

AG	Advocate General
AI	artificial intelligence
AKP	Justice and Development Party
AMIF	Asylum, Migration and Integration Fund
ARCI	Italian Recreational and Cultural Association
ASCB	American Society for Cell Biology
ASFJ	Area of Freedom, Security and Justice
ASGI	Association for Juridical Studies on Immigration
AVMS	Audiovisual Media Services Directive
BJA	Bulgarian Judges Association
BNP	British National Party
CAHAI	Ad hoc Committee on Artificial Intelligence
CAHAI-COG	Ad hoc Committee on Artificial Intelligence Consultation and Outreach Group
CAHAI-LFG	Ad hoc Committee on Artificial Intelligence Legal Frameworks Group
CAHAI-PDG	Ad hoc Committee on Artificial Intelligence Policy Development Group
CARA	Council for the Assistance of Refugee Academics
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBDRRRC	common but differentiated responsibilities and respective capabilities
CCJE	Consultative Council of European Judges
CDDH	Steering Committee for Human Rights
CEAS	Common European Asylum System
CEE	Central and Eastern European
CEPEJ	Council of Europe, European Commission for the Efficiency of Justice
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union

CLAHR	Committee on Legal Affairs and Human Rights
CMP	Committee on Missing Persons in Cyprus
CoE	Council of Europe
CoM	Committee of Ministers
CPCR	Collectif des parties civiles rwandaises
CRC	United Nations Convention on the Rights of the Child
CRJE	Court's Resolution on Judicial Ethics
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	civil society organisations
CTSA	Counter-Terrorism and Security Act (UK)
DARS	Draft Articles on State Responsibility for Internationally Wrongful Acts
DPIA	Data Protection Impact Assessment
DSA	Digital Services Act
EAT	Employment Appeal Tribunal
EAW	European Arrest Warrant
ECA	European Court of Auditors
ECCHR	European Center for Constitutional and Human Rights
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EDF	European Development Fund
EHRAC	European Human Rights Advocacy Centre
ENNHRI	European Network of Human Rights Institutions
EOSC	European Open Science Cloud
EP	European Parliament
ERA	European Research Area
ESR	Effort Sharing Regulation
ETS	Emissions Trading System
EU	European Union
EUTFs	EU Trust Funds
FETÖ	Fetullahist Terrorist Organization
FIDH	International Federation for Human Rights
FRA	European Union Agency for Fundamental Rights
GACS	General Administration for Coastal Security

GDPR	General Data Protection Regulation
GJRP	Global Justice and Research Project
GLAN	Global Legal Action Network
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
HPC	high-performance computing
HRA	Human Rights Act (UK)
HRC	Human Rights Committee
HRIA	Human Rights Impact Assessment
HUDERIA	Human Rights, Democracy and Rule of Law Impact Assessment
IBM	Integrated Border Management
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICNL	International Center for Not-for-Profit Law
ICtHR	Inter-American Commission on Human Rights
ICTR	International Criminal Tribunal for Rwanda
ICTs	Information and Communication Technologies
ICTY	International Criminal Tribunal for the former Yugoslavia
IIE	Institute for International Education
IIM	International, Impartial and Independent Mechanism for Syria
ILC	International Law Commission
IOM	International Organization for Migration
IPC	Immovable Property Commission
ISIS	Islamic State of Iraq and Syria
IVF	<i>in vitro</i> fertilisation
JCHR	Joint Committee on Human Rights
JITs	joint investigative teams
LBC	London Borough Council
LCGPS	Libyan Coast Guard and Port Security
LDH	League for Human Rights
LFJL	Lawyers for Justice in Libya
LGBT	lesbian, gay, bisexual and transgender

LIBE	Committee on Civil Liberties, Justice and Home Affairs of the European Parliament
LICRA	Ligue Internationale Contre le Racisme et l'Antisémitisme
LULUCF	land use, land-use change and forestry
MFF	Multiannual Financial Framework
MLA	mutual legal assistance
MOOC	Massive Open Online Course
MPU	Missing Persons Investigation Unit
MRT	Transdniestrian region of the Republic of Moldova
MSI-NET	Council of Europe – Committee of Experts on Internet Intermediaries
NATO	North Atlantic Treaty Organization
NDC	Nationally Determined Contribution
NDICI	Neighbourhood, Development and International Cooperation Instrument – Global Europe
NGO	non-governmental organisation
NHRI	National Human Rights Institution
NKR	Republic of Nagorno-Karabakh
NUS	National Union of Students
ODD	Open Data Directive
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OfS	Office for Students
OHCHR	Office of the United Nations High Commissioner for Human Rights
OMCT	World Organisation Against Torture
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PCIJ	Permanent Court of International Justice
PETI	Parliament's Committee on Petitions
PKK	Kurdistan Worker's Party
POA	Public Order Act (UK)
ROC	Rules of Court
RTBF	French-language channel of Belgian television
SAC	Bulgarian Supreme Administrative Court

SAR	Scholars at Risk
SC	Security Council
SDGs	Sustainable Development Goals
SMC	Social Media Council
TCC	Turkish Constitutional Court
TCN	third-country national
TEC	Consolidated Version of the Treaty Establishing the European Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UCL	University College London
UDHR	Universal Declaration of Human Rights
UEA	University of East Anglia
UK	United Kingdom
UKIP	United Kingdom Independence Party
UN Col	United Nations Commission of Inquiry on the Syrian Arab Republic
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children's Fund
UNITAD	United Nations Investigative Team for Accountability of Daesh/ISIL
UNSCR	United Nations Security Council Resolution
UNWGAD	United Nations Working Group on Arbitrary Detention
US	United States
WUS	World University Service

LIST OF CONTRIBUTORS

Lorenzo ACCONCIAMESSA

Lorenzo Acconciamesa works as an assistant lawyer at the Registry of the European Court of Human Rights. He is a PhD candidate in ‘Human Rights: Evolution, Protection and Limits’ at the University of Palermo, Italy, in co-direction with the Department of International and European Law of the École Doctorale de Droit de la Sorbonne, Université Paris 1, Panthéon-Sorbonne. His research project deals with the balancing of principles technique in the case law of international courts and tribunals. More generally, his research fields are international human rights law, with special emphasis on the international protection of vulnerable individuals, the interpretation of international law, and international procedural law. He is a Teaching Assistant of Public and Private International Law, International Human Rights Law, the Law of International Arbitration, and Transnational Commercial Law at the Catholic University of Milan, Italy, where he obtained a Master’s Degree in Law in 2019. He is the Content Manager of ‘RAVEL – Repository of Documents of the Law and Practice Concerning the International Protection of Adults’, a project of the Catholic University of Milan.

Marguerite ARNOUX BELLAVITIS

Marguerite Arnoux Bellavitis is a PhD candidate in Human Rights and Political Science in joint supervision at the University of Palermo and at the Salzburg Centre of European Studies of the Paris-Lodron University of Salzburg. She holds a Master’s degree in European Studies from the University Paris 8, and a European Master in Human Rights and Democratisation from the Global Campus of Human Rights during which she studied in Venice and at Maastricht University. Her PhD topic focuses on the human rights dimension in the EU decision-making process of the European asylum and migration policy.

Emiliya BRATANOVA VAN HARTEN

Emiliya Bratanova van Harten is a PhD candidate at the Faculty of Law, Lund University. Her current project focuses on migration and human rights law. It aims to show how migration law on a European level, but also on national levels, interact and impinge upon access to territory and integration outcomes of refugees who arrive under complementary pathways schemes. Emiliya has extensive experience as a refugee integration expert at the UN Refugee Agency, and in the civil society sector in Bulgaria. She holds an LLM degree in European and International Human Rights Law (*cum laude*) from Leiden University and

an MSc in Social Sciences from the University of Amsterdam. Her interests lie in the intersection between refugee law, human rights law and EU law, and their application in various contexts, such as in Central and Eastern Europe.

Christian BREITLER

Christian Breitler is a research and teaching assistant at the Institute of European Law at the University of Graz. Prior to that, he was a member of the Legal Service of the Austrian Foreign Ministry (Office of the Legal Adviser, Völkerrechtsbüro). His research interests include EU fundamental rights law, EU external relations law, and the EU system of judicial protection.

Stuart CASEY-MASLEN

Stuart Casey-Maslen is Extraordinary Professor at the University of Pretoria in South Africa, where he teaches the sources of international law, international human rights law, and the law of armed conflict. He has a doctorate in international humanitarian law and Master's degrees in international human rights law and forensic ballistics. His book, *The Right to Life under International Law: An Interpretive Manual*, was published by Cambridge University Press in September 2021.

Philip CZECH

Philip Czech holds a PhD in law and in history. Since 2002 he has been a senior scientist at the Austrian Institute for Human Rights, which became a department of the University of Salzburg in 2014. He is editor of the *Newsletter Menschenrechte*, a periodical reporting in German on the current case law of the European Court of Human Rights. He is mainly engaged with publishing and teaching in the field of fundamental rights, especially with the case law of the ECtHR and its transposition in Austria. Further main fields of interest are asylum and migration law, the freedom of reproductive choice and family law, and human rights in the penitentiary system.

Nasiya DAMINOVA

Nasiya Daminova holds an LLM in European Law from the Stockholm University (2014) and a PhD in Transnational and Comparative Law from the Scuola Superiore Sant'Anna (2018). She has been a postdoctoral researcher at the Faculty of Management and Business, Tampere University, since June 2022. Her stay at the university, financed by the Strategic Research Council of the Academy of Finland (Just Recovery from Covid-19? Fundamental Rights, Legitimate Governance and Lessons Learnt (JuRe) project), is hosted by Professor Jukka Viljanen and Dr. Anu Mutanen. Her research interests include post-pandemic legislation, COVID-19, transnational judicial dialogues, access to justice, and the development of procedural rights in Europe. Prior to moving to Tampere, she spent three years as a postdoctoral researcher at the University of Konstanz (Chair of Public Law with Focus on International Law) and the Hungarian Academy of Sciences (Institute for Legal Studies) in Budapest.

Elif ERKEN

Elif Erken is a PhD candidate at the Montaigne Centre for Rule of Law and Administration of Justice at Utrecht University. Her PhD focuses on the procedural role of organised civil society organisations and national human rights institutions in the European Convention on Human Rights system.

Francesca FANUCCI

Francesca Fanucci is a Senior Legal Advisor at the European Center For Not-For-Profit Law, where she works on projects addressing the impact of digital technologies and artificial intelligence on civic freedoms. She represents the Conference of International NGOs of the Council of Europe at the CoE Committee on Artificial Intelligence, is a member of the Expert Group on Neurorights of the Inter-American Legal Committee on Human Rights, and is a Fellow at the Center for Media, Data and Society, Central European University.

Helen FENWICK

Helen Fenwick, LLB, BA, is Professor of Law at Durham University Law School, and a Human Rights Academic Consultant to Doughty Street Chambers, specialising in human rights, especially in relation to the ECHR and freedom of expression. She is author of *Media Freedom under the Human Rights Act* (OUP 2006, with G. Phillipson); Volume 88A, 5th edn., *Halsbury's Laws of England 'Rights and Freedoms'* (2013); *Civil Liberties and Human Rights* (Routledge, 5th edn. 2017); 'Protecting free speech and academic freedom in universities' (with I. Cram) (2018) 81(5) *Modern Law Review* 825–873.

Delia FERRI

Delia Ferri is Professor of Law at Maynooth University School of Law and Criminology and the Co-director of the Assisting Living & Learning (ALL) Institute. She is an affiliated researcher at the Dirpolis Institute of Scuola Superiore Sant'Anna (Italy) and a Fellow at the Burton Blatt Institute of Syracuse University (US). Prof. Ferri is the recipient of a European Research Council Consolidator Grant for the project 'Protecting the Right to Culture of Persons with Disabilities and Enhancing Cultural Diversity through European Union Law: Exploring New Paths – DANCING', and has taken part in several EU-funded studies on disability law. She has published extensively in the fields of EU and comparative law, with a focus on the rights of people with disabilities, participatory processes and cultural diversity.

Francesco Luigi GATTA

Francesco Luigi Gatta is Research Fellow in EU Law at the Université Catholique de Louvain (Belgium), Postdoctoral Researcher in International Law at the Tuscia University (Italy), and Visiting Professor at the Riga Graduate School of Law (Latvia), where he teaches EU Law, European Constitutional Law and Migration and Asylum Law. He is also a lawyer (Milan Bar, Italy), and has been a legal assistant at the European Court of Human Rights (Judge Wojtyczek – Poland).

Valentina GOLUNOVA

Valentina Golunova is a PhD candidate at Maastricht University, and part of the Transformative Effects of Globalisation in Law (TEGL) research group. Her research interests concern the protection of fundamental rights in the digital environment. In her PhD project, Valentina examines how the advent of AI transforms the EU intermediary liability framework and affects freedom of expression online.

Lisa HESCHL

Lisa Heschl is a senior scientist and teaching fellow at the European Training and Research Centre on Human Rights and Democracy at the University of Graz (UNI-ETC). She received her PhD in law from the University of Graz, and holds a European Master's Degree in Human Rights and Democratization (EMA). She has been a Marie Curie Visiting Research Fellow at the University of Deusto, Bilbao, and is a visiting lecturer at the University Oldenburg and the University of Padua. Her research focuses on the European migration and asylum policy and legislation, and the extraterritorial application of international and European refugee and human rights law and its relation to European border policies, and she has published widely in this field.

Elisabeth HOFFBERGER-PIPPAN

Elisabeth Hoffberger-Pippan is a researcher at the International Security Division of the German Institute for International Security Affairs, Berlin. She is also head of the International Panel on the Regulation of Autonomous Weapons (iPRAW), a project funded by the German Foreign Office. Elisabeth's research focus is on humanitarian and human rights law, as well as new technologies, security, defence and military robotics. Her doctoral thesis *Less-Lethal Weapons under International Law* was published by Cambridge University Press in August 2021.

Andrea HUBER

Andrea Huber has been Head of the Human Rights Department at the OSCE Office for Democratic Institutions and Human Rights (ODIHR) since September 2020. Before joining ODIHR as Deputy Chief of the Rule of Law Unit in 2017, Ms Huber was responsible for international advocacy and policy development for criminal justice reform as Penal Reform International's Policy Director. Previously, as Deputy Director for Europe and Central Asia of Amnesty International, she led research and campaign activities on human rights in Europe and Central Asia. Ms Huber is a graduate of Vienna Law School.

Eline LABEY

Eline Labey is a PhD candidate at the Free University of Brussels (VUB) and a trainee lawyer at the criminal law firm DWL-LAW. She holds a master's degree in international and European Law from the VUB and an LLM from the University of Cambridge. Her doctoral thesis explores a human rights-based approach to

the content moderation of social media platforms, with a focus on the right to freedom of opinion and expression.

Karin LUKAS

Karin Lukas is a senior scientist and Head of Department at the Ludwig Boltzmann Institute of Human Rights. In January 2011, she joined the European Committee of Social Rights (ECSR) of the Council of Europe, of which she had been since Vice President since 2017. She has been a consultant for various national and international organisations, such as the UN Development Programme and the Austrian Ministry for Foreign Affairs. She has done research as well as project-related activities in the field of human rights, in particular women's rights, development cooperation and business. Ms Lukas holds an LLM in Gender and the Law (American University) an EMA in Human Rights and Democratization (University of Padova) and a PhD in Legal Studies (University of Vienna). She currently works on the issue of labour rights in global production networks, and on international as well as company-based grievance mechanisms.

Adelaide MADERA

Adelaide Madera received her PhD in Ecclesiastical Law and Canon Law in 2000. She was an international scholar at the Catholic University of Leuven from November 1999 to May 2000. She is a Full Professor at the Department of Law of the University of Messina, Italy, where she currently teaches Canon Law, Law and Religion, Comparative Religious Laws, and Religious Factor and Antidiscrimination Law. She is a member of the Academic Board of the PhD School in Legal Studies at the University of Messina, and serves on the Editorial Committee of the Journal *Quaderni di Diritto e Politica Ecclesiastica*. She is the author of four books and several academic writings. Adelaide Madera's research activities focus on the interrelationship between law and religion, specifically church–state relationships, religious organisations and the law, and religious and civil marriage.

Alessandro MANTELERO

Alessandro Mantelero is Associate Professor of Private Law and Law & Technology at Polytechnic University of Turin and holder of the Jean Monnet Chair in Mediterranean Digital Societies and Law. He has served as Council of Europe Scientific Expert on AI, data protection and human rights, and as an expert on data regulation for several organisations, including the UN, the EU FRA, and the European Commission. His latest book is *Beyond Data: Human Rights, Ethical and Social Impact Assessment in AI* (Springer-Asser 2022).

Ronagh McQUIGG

Ronagh McQuigg is a senior lecturer in the School of Law, Queen's University Belfast (QUB). Her research interests are in the area of international human rights law, with a particular focus on domestic abuse as a human rights issue, and she currently teaches in the areas of family law and property law. She holds

an LLB, an LLM in Human Rights Law, and a PhD, all from QUB, and she joined the staff of the School of Law at QUB in 2009.

Rachel MURRAY

Rachel Murray is Professor of International Human Rights Law at the University of Bristol, and also Director of its Human Rights Implementation Centre. Her work focuses on torture prevention, implementation of human rights decisions and the African human rights system. She also advises national, regional and international organisations, including the African Commission and Court on Human and Peoples' Rights. She engages with governments, civil society organisations and individuals on human rights law, and undertakes consultancies for regional and international organisations, including the UN and OSCE; among these, for the latter, is a project on universal jurisdiction, of which this publication is a result. She is also a Fellow of the Human Rights Centre at the University of Essex, Deputy Leader of Doughty Street Chambers' International team, and a magistrate sitting in Bristol.

Zoe NAY

Zoe Nay is a PhD candidate with the University of Melbourne School of Law and the Melbourne Climate Futures research centre, where she is the recipient of a scholarship for graduate research in the field of human rights. Broadly, Zoe's research examines the role of law in addressing environmental challenges, with a focus on climate change. Zoe's doctoral research examines legal responses to climate change loss and damage in the Pacific.

Harriet NÍ CHINNÉIDE

Harriet Ní Chinnéide is a PhD researcher at Hasselt University, as part of the iBOF project, 'Future Proofing Human Rights: Developing Thicker Forms of Accountability'. Her research focuses on the procedural turn in the jurisprudence of the European Court of Human Rights, and the impact thereof for legal accountability for rights violations in Europe. She is particularly interested in how this emerging approach may affect the rights of minorities.

Manfred NOWAK

Manfred Nowak is Director of the Vienna Master of Arts in Applied Human Rights at the University of Applied Arts in Vienna, as well as Secretary General of the Global Campus of Human Rights, based in Venice. In 2016, he was appointed Independent Expert leading the UN Global Study on Children Deprived of Liberty, which he presented in October 2019 to the UN General Assembly. His former expert functions include UN expert on enforced disappearances, UN Special Rapporteur on Torture, judge at the Human Rights Chamber for Bosnia and Herzegovina in Sarajevo, and Vice-Chair of the EU Fundamental Rights Agency in Vienna. He was director of the Netherlands Institute of Human Rights

at the University of Utrecht, founder and co-director of the Ludwig Boltzmann Institute of Human Rights at the University of Vienna, and held visiting chairs at the University of Lund, the Graduate Institute in Geneva, and at Stanford University.

Gerd OBERLEITNER

Gerd Oberleitner is UNESCO Chair in Human Rights and Human Security at the Faculty of Law, University of Graz, and Director of the European Training and Research Centre for Human Rights and Democracy at the University of Graz. He has been a lecturer at the Centre for the Study of Human Rights of the London School of Economics and Political Science, and Visiting Professor at the European Inter-University Centre Venice, the Université du Québec à Montréal, the Universities of Ljubljana and Bochum, and Rutgers University. He teaches at the Global Campus of Human Rights.

Ludovica PASERI

Ludovica Paseri is a postdoctoral research fellow at the Law Department of the University of Turin, in the domain of Philosophy of Law and Law and Technology. Her research interests are privacy and data protection law, the EU Open Science policies, open data, digital governance, and information technology law. In 2022, she received a joint international Doctoral Degree in Law, Science and Technology (LAST-JD) from the University of Bologna and the University of Luxembourg.

Livia PERSCHY

Livia Perschy is the responsible translator and language editor, and a junior researcher, at the International Centre for the Promotion of Human Rights at the Local and Regional Levels under the auspices of UNESCO in the Human Rights City of Graz, Austria. She is actively involved in the Human Rights City Process of Graz. Her research project interests are the implementation of adequate housing and equal access rights to housing at the local level. She holds a Master's degree in Translation Studies (German/English/French), and is a transcultural communication expert. Currently, she is also in training to become a psychotherapist.

Paula RHEIN-FISCHER

Paula Rhein-Fischer is a postdoctoral fellow at the Academy for European Human Rights Protection in Cologne and part of the Danish, Dutch, German and Polish research consortium 'The Challenges of Populist Memory Politics and Militant Memory Laws (MEMOCRACY)'. She holds two German state exams in law and a Maîtrise en Droit from Paris I, and completed her PhD, at the Institute for International Peace and Security Law at the University of Cologne, on the use force and factual mistakes. During her PhD research, she was a visiting scholar at the Human Rights Institute of Columbia Law School.

Jennifer ROBERTS

Jennifer Roberts has been working on the prevention of torture and abolition of the death penalty for over four years. At OSCE ODIHR, she focused on strengthening the protection of people in prison in the OSCE region, through training prison staff and independent monitoring, as well as understanding the root causes of torture. There, she contributed to numerous publications and coordinated research into universal jurisdiction in the region, as a way to fight impunity. Her work at ODIHR on capital punishment and its link to torture led to her new position at Reprieve, where she works more closely on US death penalty abolition. Jennifer graduated from the University of Bristol with a BA Joint Hons in German and Russian and later earned a European Masters in Human Rights and Democratisation from the Global Campus of Human Rights.

Martina SARDO

Martina Sardo is a PhD student in Human Rights at the University of Palermo. She holds a Master's degree in Law from the University of Palermo. Her research topic deals with climate change and forced migration, focusing on the impact of sea level rise, international protection obligations and the role of the duty to cooperate. She was a visiting fellow at the World Trade Institute (WTI) of the University of Bern.

Imke STEIMANN

Imke Steimann works at the Global Campus of Human Rights as Head of Office of the Secretary General. In this context, among other functions, she co-founded and coordinates a scholarship and support programme for Afghan students and scholars at risk who are being hosted at Global Campus member universities around the globe. Imke holds an MA in Human Rights from the University of Vienna and a BA in Liberal Arts and Sciences with a major in Governance from the University of Freiburg. Her research interest lies at the intersection of human rights and security studies, with a specific focus on children in the context of armed conflict.

Agnieszka SZKLANNA

Agnieszka Szklanna has been Secretary to the Committee on Legal Affairs and Human Rights (CLAHR) of the Parliamentary Assembly of the Council of Europe since 2009. Before joining the CLAHR Secretariat, she worked as a lawyer in the Polish division of the Registry of the European Court for Human Rights (ECtHR) (2003–2004) and the Department for the Execution of Judgments of the ECtHR (2004–2009). Earlier, she had worked as a trainee barrister in a law firm in Warsaw (Poland), and joined the Warsaw Bar Association in 2004. Agnieszka Szklanna holds three Master's degrees (in Applied Linguistics, and in Law, from Warsaw University, and in European Studies from the College of Europe in Natolin) and a PhD in public international law (Warsaw University). She lectured at the Warsaw University's Faculty of Law, the Strasbourg University's

Political Studies Institute, and the Paris Dauphine University's Law Department. She regularly publishes on issues of the ECtHR system, legal protection of aliens, and relations between the EU and the Council of Europe.

Emre TURKUT

Emre Turkut is a postdoctoral researcher at Hertie School's Centre for Fundamental Rights. His research covers a variety of fields within the domain(s) of public international law, human rights law and comparative constitutional law including emergency powers, counter-terrorism, international law in domestic courts and judicial politics in authoritarian regimes. Emre's research outputs received several scholarly awards and prizes including an honorable mention for the American Society of Comparative Law's prestigious Colin B. Picker Prize in Comparative Law in 2020. He previously taught at the Riga Graduate School of Law, held a Swedish Institute fellowship at Uppsala University (2018–19) and a DAAD fellowship at Hertie School (2019–20). He also held a *re:constitution* fellowship at the Max Planck Institute for Comparative Public Law and International Law and the European Court of Human Rights (2021–22). Along with his academic work, Emre is frequently contacted by NGOs and global media platforms to give expert opinions on issues of human rights, international law and Turkish law. He also serves as a legal consultant and expert witness on Turkish law to several private entities.

Léa URZEL

Léa Urzel is a PhD candidate at Maynooth University School of Law and Criminology, within the remit of the DANCING research project, which is funded by the European Research Council. She holds an LLB from the University of Nantes (France) and studied European and International Law at the University of Helsinki (Finland). In 2018, she completed an LLM in International and Comparative Disability Law and Policy at the National University of Ireland, Galway. She carried out traineeships at the Office of the Special Rapporteur on the Rights of Persons with Disabilities, the NGO Humanity & Inclusion, and the European Commission's Directorate-General for Employment, Social Affairs and Inclusion, in Brussels.

Jasper VAN STEENBERGEN

Jasper Van Steenbergem is a PhD candidate at the University of Antwerp, where he is part of the research group Government and Law. In this capacity, he is writing a doctoral thesis about the freedom of expression of civil servants. He holds a Master's degree in Law from the University of Antwerp. In his capacity as a teaching assistant, he teaches the administrative law practicum. His research interests lie in administrative law, human rights law and the deontology of the civil service. He publishes in administrative and human rights law in general, and in civil service law in particular. Before joining the academy, he worked as a lawyer in environmental law and public procurement law in a Belgium law firm.

Margaretha WEWERINKE-SINGH

Margaretha Wewerinke-Singh is an Assistant Professor of Public International Law at the Grotius Centre for International Legal Studies (Leiden University), and an Adjunct Senior Lecturer in Environmental Law at the Pacific Centre for Environment and Sustainable Development (The University of the South Pacific). Her research, broadly speaking, focuses on the role of law in addressing sustainable development challenges. In addition to her academic work, she currently leads the global team assisting the Republic of Vanuatu in its pursuit of an Advisory Opinion on climate change and human rights from the International Court of Justice (with Julian Aguon at Blue Ocean Law), and serves on the Committee of Legal Experts of the Commission of Small Island States on Climate Change and International Law. Further, she leads the IUCN WCEL Climate Change Specialist Group project Judicial Handbook on Climate Litigation (with Sarah Mead), which identifies emerging best practice in the adjudication of climate change. She writes in her academic capacity.