



Hertie School
Centre for
Fundamental Rights



Annual Report

2020-2021

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Welcome

The Centre for Fundamental Rights was established at the Hertie School in September 2019 to address current and emerging challenges to human rights protections. At its launch on 20 February 2020, just before the first COVID-lockdowns in Europe, it brought together over two hundred scholars, students, policy makers and human rights activists to address a pivotal question in the field of fundamental rights of our time: 'Are fundamental rights losing or gaining ground?'

In its first two years of existence, the Centre for Fundamental Rights has grown considerably, currently comprising twelve researchers and three administrative staff. We address four key and intersecting human rights challenges, namely, new forms of authoritarianism, migration and asylum, the climate crisis and new technologies. In October 2021, the Centre launched a new collaborative project on automated decision-making in asylum and migration funded by the Volkswagen Foundation - Algorithmic Fairness for Asylum Seekers and Refugees (AFAR).

Research excellence informs the entire vision of the Centre for Fundamental Rights, as reflected in our Mission Statement and Strategic Plan (2021-2025), which were finalized after a series of internal and external consultations on 1 September 2021. We are committed to grow a centre of academic excellence, fostering diverse disciplinary and interdisciplinary approaches in human rights research, including rigorous doctrinal legal, normative, critical and empirical research.



Susanne Baer, Patricia Sellers, Başak Çalı, Cathryn Costello, Henrik Enderlein and Arjun Appadurai at the Launch Event of the Centre for Fundamental Rights, 20 February 2020.

In this first Annual Report, we will provide an account of our activities in the Academic Year 2020-2021 across the fields of research, teaching and engagement.

We have defined our mission as establishing a beacon and hub for impactful research, teaching and engagement on key challenges to human rights. We look forward to continuing to work together with our team to realise this aim.

Başak Çalı and Cathryn Costello

Co-Directors, Centre for Fundamental Rights
January 2022

In memoriam:

Henrik Enderlein (1974-2021)

Henrik Enderlein, who served as a President of the Hertie School from 2018 – 2021, was a visionary leader. As President, Henrik initiated an ambitious and future-oriented plan to expand the university's research and teaching capacity, establishing Hertie School's five Centres of Competence, among them the Centre for Fundamental Rights.

The Centre for Fundamental Rights' inauguration on 20 February 2020 comprised a panel discussion between the Co-Directors, Susanne Baer, Justice of Germany's Federal Constitutional Court and Professor of Public Law and Gender Studies at the Humboldt-Universität zu Berlin and Patricia Sellers, Special Advisor for Gender for the Office of the Prosecutor of the International Criminal Court. Arjun Appadurai, Professor of Anthropology and Globalisation at the Hertie School and Goddard Professor in Media, Culture and Communication at New York University, moderated the discussion.

At this juncture, we recall Henrik's opening speech at this event. Henrik noted that the discussion takes place in the context of the deadly racially motivated attack, which took place a day earlier, on February 19, 2020, in the town of Hanau. In a mass shooting, a racist far-right extremist killed nine people - Gökhan Gültekin, Sedat Gürbüz, Said Nesar Hashemi, Mercedes Kierpacz, Hamza Kurtović, Vili Viorel Păun, Fatih Saraçoğlu, Ferhat Unvar und Kaloyan Velkov. Hendrik emphasised that this context reminds us of the importance of the discussion on the protection of fundamental rights.

In a message to students and other members of the Hertie School community he said: "There are many students here tonight. Some of you will have received messages from parents, friends, close ones asking you whether you feel worried today about what it means to live in Germany as someone who is perceived as racially different, religiously different, sexually different, or simply as non-German.

Let me send out a very, very clear message to you. You're welcome here. Whoever you are, you live in an open society, you live in a tolerant society, you enrich all of us, and we will do whatever we can do to make the Hertie School a home for you, to make Berlin a home for you, and to make Germany a home for you."

"This event is taking place on a day, which throughout the last hours, became a horrible reminder that the discussion of the protection of fundamental rights in Germany and beyond is more important and more necessary than ever," said Henrik. "We are not only prepared to speak up; we have a moral, public obligation to speak up."

Henrik concluded his speech by putting a spotlight on the Centre's mission:

"The Centre for Fundamental Rights at the Hertie School was established to address exactly these themes: the resilience and relevance of fundamental rights under changing political, economic, social and environmental conditions, and the future challenges to the protection of human and fundamental rights."

We at the Centre for Fundamental Rights deeply miss him.



The Centre for Fundamental Rights 2020/2021 in numbers

Events hosted at the Centre in the academic year 2020/2021



Researchers who presented their work at the centre in 2020/2021:



Average number of attendees at events

Fundamental rights in practice

Research colloquia

Book launches



Social media

Social media presence



The Centre for Fundamental Rights joined Twitter in February 2021. The Centre regularly tweets about Centre news, activities, upcoming events and event highlights. In May, the Centre launched its 'Meet the Team' tweets, presenting Centre researchers and their research focus. The Centre Twitter account has already gained more than 1300 followers.

Team

Directors, Researchers and Administration

Academic Staff

Prof. Başak Çalı, PhD

Professor of International Law | Co-Director, Centre for Fundamental Rights

Prof. Cathryn Costello, DPhil (Oxon)

Professor of Fundamental Rights | Co-Director, Centre for Fundamental Rights

Juan Auz

PhD Researcher, Doctoral Programme in Governance 2019

Dr Grażyna Baranowska

MSCA Fellow | Postdoctoral Researcher, Centre for Fundamental Rights (2021 - 2023)

Dr Begüm Başdaş

Postdoctoral Researcher, Centre for Fundamental Rights (2021 - 2023)

Joseph Finnerty

PhD Researcher, Doctoral Programme in Governance 2021

Dr Alexandre Skander Galand

Postdoctoral Researcher, Centre for Fundamental Rights

Dr Emre Turkut

Postdoctoral Researcher, Centre for Fundamental Rights (2021-2023)

Dr Aristi Volou

Postdoctoral Researcher, Centre for Fundamental Rights

Dr Natalie Welfens

Postdoctoral Researcher, RefMig project, Centre for Fundamental Rights (2021- 2022)

Vera Wriedt

PhD Researcher, Doctoral Programme in Governance 2020

Administration

Dr Michal Kramer

Centre Manager, Centre for Fundamental Rights

Sarah Lawton-Görlach

Associate Third-Party Funding (as of October 2021)

Johanne Vinter

Centre Assistant, Centre for Fundamental Rights

Visiting Fellows

Alexandra Lily Kather, LL.M

Visiting Fellow 2021 | Centre for Fundamental Rights

Affiliated Faculty

Prof. Joanna Bryson, PhD

Professor of Ethics and Technology

Prof. Mark Dawson, PhD

Professor of European Law and Governance

Prof. Dr. Anita Gohdes

Professor of International and Cyber Security

Prof. Dr. Lukas Graf

Assistant Professor of Educational Governance

Prof. Dr. Anke Hassel

Professor of Public Policy

Prof. Dr. Klaus Hurrelmann

Professor of Public Health and Education

Bernhard Knoll-Tudor, PhD
Director Executive Education

Prof. Dr. Michaela Kreyenfeld
Professor of Sociology

Dilek Kurban, PhD, JD
Postdoctoral fellow at the European University Institute, Adjunct Faculty

Dr. Sorcha MacLeod
Adjunct Faculty; Associate Professor, University of Copenhagen

Prof. Johanna Mair, PhD
Professor of Organization, Strategy and Leadership

Prof. Alina Mungiu-Pippidi, PhD
Professor of Democracy Studies

Prof. Dr. Simon Munzert
Assistant Professor of Data Science and Public Policy

Prof. Dr. Mujaheed Shaikh
Professor of Health Governance

Prof. Dr. Pierre Thielbörger
Adjunct Faculty; Professor of German Public Law and International Law, at the Ruhr University Bochum

Student Advisory Board 2020-2021

Alena Dietl
MPP, Class of 2022

David Backovsky
MIA, Class of 2022

Benedikt Hecking
MIA, Class of 2021

Malte Spielmann
MPP, Class of 2022

Marina Luna
MPP, Class of 2022

Ion Skidu
Executive MPA, Graduating year 2021

Elise Racine
Executive MPA, Graduating year 2021

Etienne Höra
MIA, Class of 2022

The Student Advisory Board for the Centre for Fundamental Rights is an independent student body that acts as a link between the Centre and Hertie School students. It organises student-led events and provides advice on programming, events and other activities hosted by the Centre.

The board had representation from first and second-year cohorts students in the MIA, MPP and EMPA programmes.

Activity highlights in the 2020/2021 academic year included:

- Adopting the rules of governance for the Student Advisory Board.
- Conceptualising and producing the Student Advisory Board podcast ‘Asking the Right(s) Questions’ with a series of episodes about Covid-19 and human rights.
- Participating in the Centre’s annual retreat.



Asking the Right(s) Questions – A podcast by the Centre for Fundamental Rights’ Student Advisory Board:

- [Episode 1: Covid-19 & Human Rights – Vaccine Passports with Dr Rebecca Brown \(Uni Oxford\) - Asking the Right\(s\) Questions - Podcast](#)
- [Episode 2: Covid-19 & Human Rights – Global Vaccine Inequity with Stephen Cockburn \(Amnesty Int\) - Asking the Right\(s\) Questions - Podcast](#)

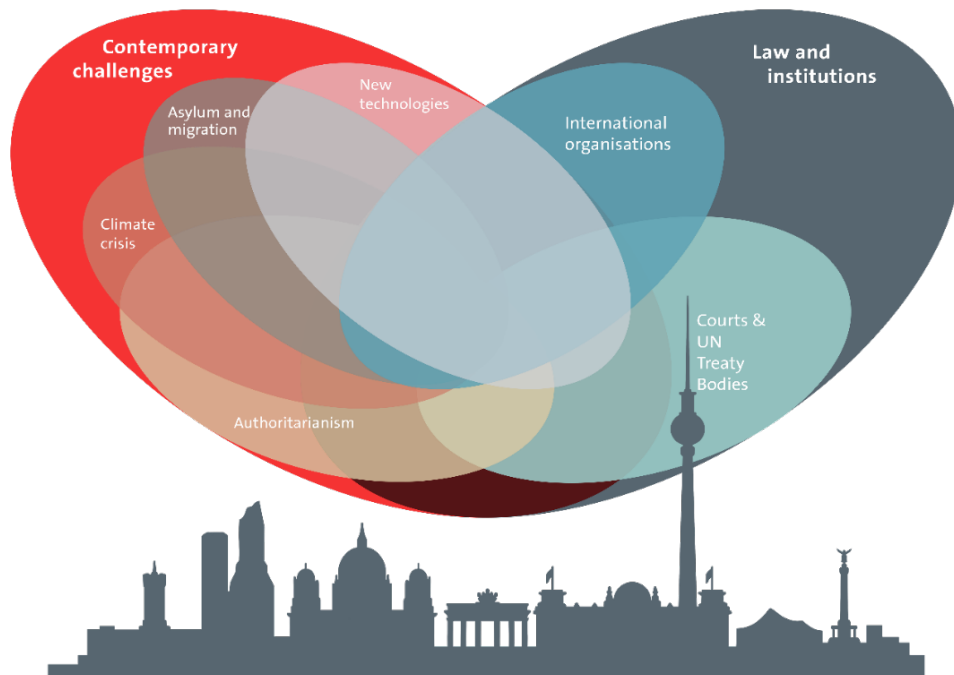
Research

Our research focuses on contemporary and emerging challenges to the protection of fundamental rights in domestic, regional and global law and governance, currently organised in six clusters.

Across all clusters, our research addresses law and institutions, in particular the role of international and domestic courts, international organisations, other human rights institutions.

Current Research Clusters

1. Asylum and migration
2. New forms of authoritarianism
3. Climate crisis and human rights
4. New technologies and human rights
5. The role of international organisations in the protection of fundamental rights
6. The role of the UN Treaty Bodies, international and domestic courts in the protection of fundamental rights



Research projects

Bad faith violations of human rights

Prof. Başak Çalı

In the last decade, the European Court of Human Rights (ECtHR) has started to ask whether ulterior political or economic motives are at play when states restrict human rights. In doing so, the Court has made important inroads into developing bad faith review standards against the backdrop of the decay of rule of law and democracy in Europe.

Bad faith is an under-developed and contested doctrine in international law. Sceptics argue that it is hard to prove and may let too much of politics into law. The recent doctrinal innovations of the ECtHR, therefore, offer a critical case to study what a bad faith review is, what it is for, whether it works and whether we need more or less of it in international law in general and in human rights law and in Europe, in particular.

This project aims to analyse the purposive evolution of bad faith reviews in the case law of the ECtHR, identify

and analyse doctrinal innovations in evidentiary standards for establishing bad faith and examine the differences between bad faith and good faith review standards in human rights law and international law.

It examines the effects that bad faith reviews have on our understanding of the distinction between law and politics and situate the potential effects of this burgeoning judicial practice and doctrine vis-à-vis similar developments in other fields of international law, most notably, international environmental law.

Related publications in 2020/2021:

- Çalı B, 'How Loud Do the Alarm Bells Toll? Execution of 'Article 18 Judgments' of the European Court of Human Rights' (2021) 2(2) *European Convention on Human Rights Law Review* 274.
- Çalı B, 'Autocratic Strategies and the European Court of Human Rights' (2021) 2(1) *European Convention on Human Rights Law Review* 11.
- Çalı B and K Hatas, 'History as an Afterthought: The (Re)discovery of Article 18 in the Case Law of the European Court of Human Rights' in HP Aust and E Demir-Gürsel (eds), *The European Court of Human Rights: Current Challenges in Historical and Comparative Perspective* (Edward Elgar 2021).



RefMig: Refugees are migrants

Horizon 2020 individual award funded by the European Research Council (grant number 716968)

Prof. Cathryn Costello, Dr Jessica Breauth, Dr Natalie Welfens

The RefMig project, an individual European Research Council (ERC) project led by Professor Cathryn Costello, aims to re-examine the global refugee regime through the lens of mobility and migration. To achieve a deeper understanding of the laws, norms, institutions and practices that govern refugeehood and the migration and mobility of refugees, the project examines the division between refugees and (other) mig-

rants in several contexts.

RefMig currently has two main strands: Recognising Refugees is a comparative empirical study of diverse processes for recognising refugees, examining in particular group recognition practices and the role of the United Nations High Commissioner for Refugees (UNHCR)

in Refugee Status Determination (RSD).

The Organisations of Protection strand examines the role of international organisations in the global migration and refugee regimes. That strand currently focuses on the role of the International Organization for Migration (IOM) in particular, its obligations, ethos and accountability.

Accountability is an overarching theme of RefMig, and one of the first project outputs was a Special Issue of the German Law Journal entitled Border Justice: Migration and Accountability for Human Rights Violations.

The RefMig project is a collaborative project based at the Centre for Fundamental Rights and the Refugee Studies Centre (RSC), University of Oxford. At Oxford, Dr Derya Ozkul led research examining practices in Lebanon, while Dr Caroline Nalule examined Kenya and South Africa. Dr Angela Sherwood led the research on IOM. The team at Hertie now includes Dr Natalie Welfens, Dr Jessica Breugh and a team of external researchers examining refugee recognition practices in key states globally.

Related Publications in 2020/2021:

- Costello C and I Mann, 'Border Justice: Migration and Accountability for Human Rights Violations' (2020) 21(3) German Law Journal 311.
- Costello C, Overcoming Refugee Containment and Crisis (2020) 21(1) German Law Journal 17.
- Forced Migration Review, *Recognising refugees* (65, 2020).



Hard refugee protection through soft enforcement

Prof. Başak Çalı, Prof. Cathryn Costello and Dr Aristi Volou

The research examines the normative structure and practical consequences of various United Nations human rights treaty bodies focusing on refugee rights, in particular as 'soft enforcers' of the norm of *non-refoulement*. Under international law, *non-refoulement* requires states to refrain from returning anyone to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other life-threatening and irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.

The research blends empirical and doctrinal analysis. It examines complaints brought to UN treaty bodies against states accused of disregarding their duty to prohibit refoulement and analyses the normative structure of the protections developed by UN treaty bodies against refoulement, given that multiple international judicial institutions alongside the treaty bodies shape and enforce the international norms of *non-refoulement*. The project thus examines the contribution

of UN treaty bodies to international law on *non-refoulement*. In addition, the project aims to reflect on the role of the international rule of law and 'soft enforcement' in refugee protection on a domestic level.

Related Publications in 2020/2021:

- Çalı B, C Costello and S Cunningham, 'Hard Protection through Soft Courts? *Non-Refoulement* before the United Nations Treaty Bodies' (2020) 21(3) German Law Journal 355.



The spectacle of international criminal law before national courts

Dr Alexandre Skander Galand

This research seeks to unveil why, when and how national judges resort to modern international criminal law as well as the impact of such process on domestic human rights law. The fear that international criminal law becomes a tool for the arbitrary exercise of power was indeed one of the reasons why international criminal courts and tribunals were preferred to domestic trials.

During the academic year 2020/2021, the research has questioned whether this fear still prevails today, and whether it explains why high-ranking officials are granted immunity from foreign domestic jurisdiction under international law. The findings of this part of the research show that what distinguishes domestic and international courts. While domestic courts may legally act on behalf of the international community, yet at the behest of victims, certain international criminal courts act on behalf, and at the behest of, the international community. This distinction explains why, in contrast to domestic courts, certain international criminal courts

may take actions which may disturb the stability of international relations, the very rationale of immunity from foreign jurisdiction.



Related Publications in 2020/2021:

- Galand AS, 'Bemba and the Individualisation of War: Reconciling Command Responsibility under Article 28 Rome Statute with Individual Criminal Responsibility' (2020) 20 International Criminal Law Review 669.
- Çalı B and AS Galand, 'Towards a Common Institutional Trajectory? Individual Complaints Before UN Treaty Bodies During Their 'Booming' Years' (2020) 24 International Journal of Human Rights 1103.

PhD project: Postcolonial bordering and human rights law

Vera Wriedt

During collective expulsions, people are forcibly returned without the possibility to explain their individual circumstances - implying the denial of any protection or other needs.

This interdisciplinary research examines to what extent human rights law can counteract such exclusion at the border and traces the forms of statehood and subjecthood that emerge through legal discourse. In order to critically appraise the applicable human rights provisions, uncover the mechanisms underlying the

denial of access to allegedly universal protection and highlight transformative counterpoints, the project dissects regional jurisprudence in the European and African human rights systems through the prism of legal and post-colonial studies. Thus, the research brings together two pertinent but often disconnected bodies of literature and contributes to filling a gap in legal analyses on migration, which tend to overlook postcolonial theory and its insights into the colonial logics shaping border violence.

Missing migrants: Identifying and shaping obligations for protection (MIRO)

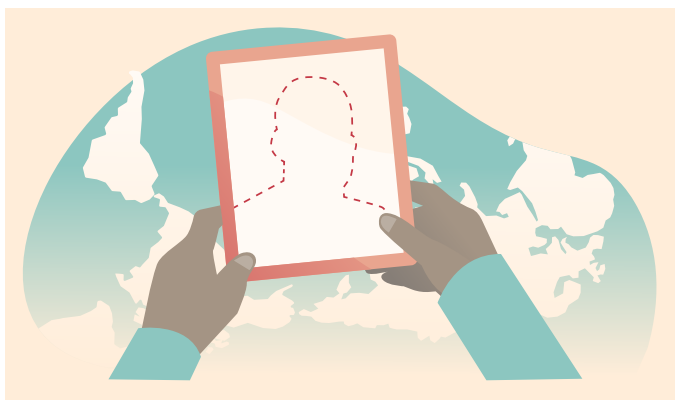
A Horizon 2020 award funded by the ERC under the Marie Skłodowska-Curie actions

Dr Grażyna Baranowska

Every year, thousands of migrants go missing, leaving behind families, who suffer not knowing whether their loved ones are alive. These human tragedies have been acknowledged and recognised by key international actors, such as in the 2018 UN Global Compact for Safe, Orderly and Regular Migration. At the same time, the very term 'missing migrants' is not legally (or otherwise) defined and most broadly includes all migrants whose whereabouts remain unknown. While international organisations (IOs) engage with the issue of 'missing migrants,' they each conceptualise the phenomenon differently, focussing variously on only those migrants that are lost at sea, die unidentified, are secretly deprived of liberty, who appear to have been trafficked, or disappear into the informal economy.

Against this background, this research project aims to identify the key facets of an umbrella concept of 'missing migrant' (a legally informed empirical concept), which will facilitate the identification of key legal obligations across various domains of international law. This in turn will provide the basis for an analysis and critique of institutional practices.

The project's main goal is to identify and interpret international legal obligations regarding 'missing migrants' and accordingly critique and shape the practices of the EU (including its externalisation practices), its Member States and pertinent IOs.



MIRO is funded by the European Union's Horizon 2020 research and innovation program under the Marie Skłodowska-Curie actions.

Undoing discriminatory borders

Prof. Cathryn Costello

Immigration laws and migration controls distribute migration opportunities unequally, to the exclusion and disadvantage of many. While migration controls intrinsically distinguish between nationals and non-nationals, they also distribute the opportunity to move legally, often in ways that are directly or indirectly discriminatory against women, racial and religious groups and those whose sexual orientation, gender-identity or family status departs from the nuclear heteronorm. Such discrimination may be identified within apparently neutral legal rules or migration statuses, or within algorithmic or other decision-making processes.

Discrimination on what are, or may be, protected grounds, has a long history within immigration and nationality law, a brief consideration of which reveals its origins in colonial projects of racialised and gendered, dispossession, exclusion and subordination.

There is, however, surprisingly little analysis of whether such immigration and nationality rules and practices are unlawfully discriminatory.

This is the case notwithstanding a multiplicity of legal prohibitions on discrimination and the ground-breaking rulings of national and international courts, which have found various laws and migration control practices to be discriminatory. This project aims to fill that gap, by bringing together a network of legal scholars with expertise in both migration and non-discrimination.

Undoing Discriminatory Borders is a collaborative project led by Principal Investigator Dr Catherine Briddick, Refugee Studies Centre (RSC), University of Oxford. Two special issues are in preparation, examining the legal dimensions of discriminatory borders.



PhD project: Dissecting the Inter-American Human Rights System in the age of climate change

Juan Auz

This research project aims to examine the emergence and development of human rights-based climate litigation in Latin America and the potential of the Inter-American Human Rights System's organs to adjudicate climate crisis' concerns. To do so, the project is divided into three parts.

The first section presents an analysis of legal opportunities for human rights-based climate litigation in Latin America. In the second part of the project, the author puts forward a critical formulation of the possibilities for the Inter-American Human Rights System to tackle the climate crisis. This leads to a prognosis about the potential of remedies from the Inter-American Human Rights Court to alleviate climate-related harm in the third part.

The first part of the research has been presented in five international academic conferences and featured in blogs in both English and Spanish and in news outlets. It is also accepted for publication in the *Journal of Human*



Rights and the Environment. The second part has been presented in three academic conferences and won an 'Honourable Mention' in the Harvard Law School's Law and Political Economy Writing Prize.

Related Publications in 2020/2021:

- Juan A, 'Human Rights-Based Climate Litigation in Latin America' (*Oxford Human Rights Hub*, 14 April 2021).

Research events

Fundamental Rights Research Colloquium

The Centre's **Fundamental Rights Research Colloquium** offers an informal setting for Hertie School scholars and external speakers to present work in progress in the field of fundamental rights and related fields. In the academic year 20/21 the Centre hosted 14 research colloquia.

Fall Semester:

- **30.09.2020** | Access to justice: a blind spot of the German welfare state? Speaker: Professor Alexander Graser (University of Regensburg).
- **14.10.2020** | Engagement between legal orders in the context of socio-economic rights. Speaker: Dr Aristi Volou (Hertie School).
- **28.10.2020** | International human rights law in the urban age. Speaker: Professor Helmut Aust (Freie Universität Berlin).
- **11.11.2020** | Subjection and Subjectivation: Migrants Navigating Legal Regimes. Speakers: Professor Nora Markard and Fabian Endemann (University of Münster).
- **25.11.2020** | Does the 1951 Refugee Convention have colonial roots? Postcolonial reading of the convention's founding. Speaker: Professor Ulrike Krause (Institute for Migration Research and Intercultural Studies).
- **09.12.2020** | The potential of non-discrimination clauses for the inclusion of migrants. Speaker: Professor Anusheh Farahat (Friedrich-Alexander-University Erlangen-Nuremberg)

Spring Semester

Cluster on 'Authoritarianism, Populism and Fundamental Rights':

- **10.02.2021** | Your rights were not violated: Constitutional capture, cruel markets and the new face of autocracy. Speaker: Professor Kim Lane Scheppele (Princeton University).
- **24.02.2021** | The authoritarian strategies and the ECtHR. Speaker: Professor Başak Çalı (Centre for Fundamental Rights, Hertie School).
- **10.03.2021** | The Guarantor Branch. Speaker: Professor Tarunabh Khaitan (University of Oxford).

Cluster on 'Emerging Challenges to Fundamental Rights':

- **24.03.2021** | Victims' rights to justice, immunities and new avenues for international criminal justice. Speaker: Dr Alexandre Skander Galand (Centre for Fundamental Rights, Hertie School).
- **07.04.2021** | Rights of nature: from procedural fix to ontological turn. Speaker: Professor Alexandra Huneus (University of Wisconsin).
- **21.04.2021** | So this is permanence: The Inter-American Human Rights System as a liminal space for climate justice. Speaker: Juan Auz (Centre for Fundamental Rights, Hertie School).
- **05.05.2021** | Re-thinking human rights for the AI revolution: moving from an ex-post to an ex-ante frame of mind. Speaker: Dr Daragh Murray (University of Essex).
- **19.05.2021** | Intersectionality as a method to advance international justice. Speaker: Alexandra Lily Kather (Centre for Fundamental Rights, Hertie School).

Research workshops

The Centre for Fundamental Rights convenes research workshops to facilitate collaborative, cutting-edge and policy relevant research in the field of human rights law and governance. In the academic year 2020/2021 the Centre hosted five research workshops:

Spotlight on the International Organisation for Migration (IOM): Obligations accountability and ethos

RefMig workshop

Hosted by Hertie School Centre for Fundamental Rights, with the Refugee Studies Centre at the University of Oxford and the Norwegian Centre for Human Rights at the University of Oslo, online on 2 November 2020, this workshop was a closed event for authors, who will be contributing to a new edited volume on IOM's obligations and accountability, to be published in 2022 by Cambridge University Press.

Participants in this workshop include: Professor Megan Bradley (McGill University), Professor Janie Chuang (American University Washington College of Law), Professor Jan Klabbers (University of Helsinki), Professor Helmut Aust (Free University of Berlin), Dr. Lena Riemer (United Nations High Commissioner for Refugees), Professor Geoff Gilbert (University of Essex), Professor Stian Øby Johansen (University of Oslo), Dr. Anne Koch (German Institute for International and Security Affairs, SWP), Professor Nina Hall (Johns Hopkins School of Advanced International Studies) and Professor Christian Kreuder-Sonnen (Friedrich Schiller University).

Undoing discriminatory borders

The Undoing Discriminatory Borders project – led by Professor Cathryn Costello at the Centre for Fundamental Rights and Dr Catherine Briddick (Refugee Studies Centre, University of Oxford) – was launched with two online workshops on 20 and 27 October 2020.

Opening the first session, which looked at legal standards governing non-discrimination in migration controls, were presentations from Prof. Cathryn Costello and Dr Catherine Briddick on racial and gender discrimination at borders. Next, Prof. Catherine Dauvergne's (University of British Columbia) contribution looked at women in refugee jurisprudence, followed by Prof. Shreya Atrey (University of Oxford) who considered the 'comparator test' within xenophobic discrimination. Prof. Anuscheh Farahat (Friedrich-Alexander-University Erlangen-Nuremberg) discussed positive action in the context of non-discrimination and material equality and, closing the session, Prof. Michelle Foster (University of Melbourne) delivered a presentation on the mass deprivation of citizenship based on racial grounds, and

whether it may constitute the international crime of apartheid.

The second workshop centred on algorithmic decision-making in migration and when this might be discriminatory. Prof. Tendayi Achiume (University of California, Los Angeles) examined 'Digital Borders as Racial Borders', advancing claims for how digital borders enhance racial borders and mask discriminatory exclusion. Dr Petra Molnar (University of Toronto) reflected on the theoretical underpinnings of discrimination, technology and migration management, combining this with empirical work on the ground. Prof. Elspeth Guild (Queen Mary University of London) then considered the Council of Europe's Convention 108+ in respect of automated decision-making, while Prof. Linnet Taylor (Tilburg University) looked at 'Market-Making, Big Data, and the Consolidation of Migration as Risk'. Bringing the workshop to a close, Joshua Simons (Harvard University) presented a paper on 'Equality and Non-Discrimination in Machine Learning.'

International human rights courts and bodies at the edge of the climate tipping point

The workshop on 9 and 10 June 2021 was organised by the Centre for Fundamental Rights at the Hertie School, the Grantham Research Institute on Climate Change and the Environment at the LSE, the University of Stirling and the Center for Human Rights and Global Justice at NYU.

Against the background of the surge of climate crisis litigation taking place not only before domestic courts in both the Global South and the Global North but also before international human rights courts and bodies, both at the regional and at the United Nations level, the aim of this workshop was to appraise the potentials

and limits of bringing climate crisis cases before international human rights courts and bodies.

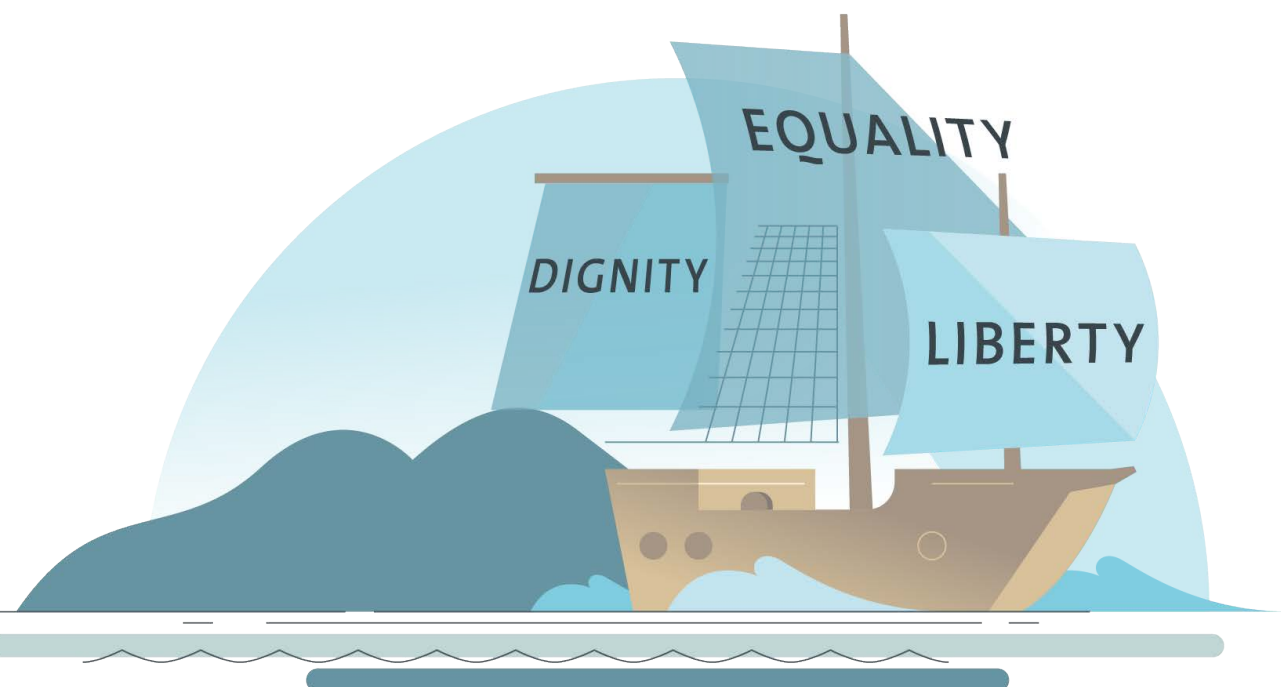
In four clusters - climate change and human rights law; climate litigation and international human rights organs; vulnerable groups and climate litigation; and regional human rights institutions and climate litigation – 12 speakers presented their work and benefited from the insightful comments of well-established academics and experts in the field of human rights law and climate change.

Old and new threats to freedom of expression: Can the European Court of Human Rights meet the challenges?

This workshop on 10 and 11 June 2021 was organised by the Centre for Fundamental Rights at the Hertie School, the European Convention on Human Rights Law Review and the University of Liverpool School of Law and Social Justice, International Law and Human Rights Unit.

Participating researchers presented novel analysis of both 'classic' freedom of expression questions, such as

hate speech, political correctness, terrorist propaganda and whistleblowing and new challenges, including online expression, mis/disinformation, mal-information and 'fake news,' the increasing concentration of media ownership and the rise of populist expression. In particular, discussions focussed on what the ECtHR can do to address the most problematic freedom of expression-related questions raised by illiberal democracies and restrictive political regimes within Europe.



Teaching and training

Teaching

The Centre for Fundamental Rights offers courses and workshops on a range of topics engaging with legal and normative reasoning, value conflicts and practical dilemmas in fundamental rights.

In 2020/2021 academic year, the following courses were taught by faculty from the Centre for Fundamental Rights:

Courses offered by core faculty

Fundamental debates in human rights in the 21st century

Fall semester | Dr Alexandre Skander Galand

This course is about the fundamental debates that have and continue to shape our understandings of human rights. Through a critical analysis of the developments of human rights law and many of its prevailing controversies, it asks how human rights operates as a central normative concern in domestic and global governance practices. This is a course for those interested in exploring the central debates around if and how human rights should guide decision making at domestic and international levels.

The global refugee regime: Law, ethics and politics

Spring semester | Prof. Cathryn Costello

This course explores the global refugee regime from a multidisciplinary perspective: legal, political and ethical.

It provides students with an understanding of international refugee law in its political context, examining the role of states, regional and international organisations, citizens, refugees and other migrants and other key actors in shaping the norms and institutions that comprise the global regime. It introduces key ethical readings and concepts on refugeehood, refugee protection and the global refugee regime, to provide students with insights into global ethics and deep ethical concerns about the nature and limits of refugee protection in a bordered world.



Pursuing international criminal justice in a complex world

Spring semester | Dr Alexandre Skander Galand

This course is about the successes and failures as well as the challenges and critiques of international criminal justice. It surveys the complex legal, political, philosophical, historical, military, gendered and cultural issues that have emerged in the fight against impunity for the perpetrators of genocide, crimes against humanity, war crimes and aggression. Despite the Rome Statute of the International Criminal Court's entry into force almost 20 years ago and its ratification by 123 States, the pursuit of international criminal justice in international relations and law is still considered to be controversial or in a state of evolution to say the least. This course aims to equip students to approach international criminal justice from diverse and critical perspectives and enable them to assess if and how justice and accountability for international crimes should be pursued.

Supporting research excellence

Research training in fundamental rights

A key objective of the Centre for Fundamental Rights is to engage in and support excellent research on human rights law and institutions. In this frame the Centre organises Annual Research Methods Workshops for doctoral and early career legal researchers.

First annual workshop in research methods in fundamental rights

19-21 August 2020 | Online

The first annual workshop focussed on comparative, normative, socio-legal and process tracing methods in studying fundamental rights.

In the first seminar, dedicated to comparative research methods, Prof. Cathryn Costello discussed with the participants the “Why, what and how of comparison”, with a focus on the question of case selections in comparative research. In a session focused on normative methodology, Dr Alain Zysset, Lecturer in Public Law at the School of Law, University of Glasgow, and a visiting fellow at the Hertie School's Centre for Fundamental Rights (2019-2020), explained what is special about normative methodology and how such methodology can be implemented in human rights research.

Dr Dilek Kurban, lecturer at the Hertie School, opened the second day of the workshop with a seminar on socio-legal research methods. In her presentation, Kurban emphasised both the importance of being mindful of socio-legal approaches in human rights research as well of the differences between bottom-up and top-down approaches to studying fundamental rights. Mark Dawson, Professor for European Law at the Hertie School, led a seminar on the implementation of process tracing methods and discussed with the participants of the workshop the relationship between the research objective, the research question and the research method.

16 researchers from 13 academic institutions were selected to present their own research project at the workshop, discuss their research methods and receive feedback from faculty and participants.

The workshop was organised within the framework of CIVICA – The European University of Social Sciences and was funded by the German Academic Exchange Service (DAAD).

First annual workshop

16  **13** 
researchers institutions

Second annual workshop in research methods in fundamental rights

2 -4 June 2021 | Online



The second annual workshop on research methods in fundamental rights took place over three days and focused on eight methods and methodological approaches led by renowned faculty from leading academic institutions:

- The Logic of case selection | Prof. Başak Çalı, Hertie School.
- Comparative methods in law | Prof. Neha Jain, European University Institute.
- Interviews in socio-legal human rights research | Dilek Kurban, PhD, Hertie School.
- Dissection as a method | Prof. Marie-Bénédicte Dembour, Gent University.
- Process-tracing | Prof. Mark Dawson, Hertie School.
- Coding and content analysis | Dr Ezgi Yildiz, The Graduate Institute Geneva.
- Legal interpretivism and normative methodology | Dr Alain Zysset, University of Glasgow.
- Archival methods and TWAIL methodology | Prof. Mohammad (Shahab) Shahabuddin, University of Birmingham, UK.

Second annual workshop

24  **researchers** **18**  **institutions**

24 researchers from 18 different institutions were selected to present their own research project at the workshop, discuss their research methods and receive feedback from faculty and participants.

The workshop was hosted by the Hertie School as a member of CIVICA - The European University of Social Sciences.



The Centre for Fundamental Rights – A hub for impactful scholarly research and engagement

In its activities, the Centre aims to be a hub for fundamental rights research and engagement. As a member of the Association of Human Rights Institutes (AHRI), it forms part of a network of more than 75 institutions from more than 30 countries. We aim at enabling exchange between scholars, civil society, politicians, policy-makers, judges and other governance actors, and presenting diverse, global perspectives. Our collaborators in 2020/2021 included:

Academic collaborations:

- Center for Human Rights and Global Justice, New York University School of Law
- Centre for International Security, Hertie School
- CIVICA – The European University of Social Sciences
- ESIL- European Society of International Law
- European Convention on Human Rights Law Review
- Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science
- iCourts, Danish National Research Foundation's Centre of Excellence for International Courts, Faculty of Law, University of Copenhagen
- IGIHRL - ESIL interest group on International Human Rights Law
- Jacques Delors Centre, Hertie School
- Kaldor Centre for International Refugee Law, University of New South Wales
- Max Planck Institute for Social Anthropology
- Middlesex University London
- Migration Policy Centre, Robert Schuman Centre for Advanced Studies, European University Institute
- Norwegian Centre for Human Rights, Faculty of Law, University of Oslo
- Refugee Studies Centre, Department of International Development, University of Oxford
- Peter McMullin Centre on Statelessness, University of Melbourne
- International Law and Human Rights Unit, Liverpool Law School, University of Liverpool
- School of Law and Social Justice, University of Liverpool
- University of Stirling
- Faculty of Law, University of Zagreb

Collaborations with state institutions, international organisations and civil society:

- German Federal Ministry of Justice and Consumer Protection
- German Presidency of the Committee of Ministers of the Council of Europe
- Amnesty International
- Berlin Human Rights Film Festival

Engagement

Public events

Spotlight on Scholarship

In the academic year 2020/2021 the Centre hosted four book discussions presenting new research publications in the field of human rights.

- 16.09.2020, **The Construction of Fatherhood: The jurisprudence of the European Court of Human Rights** (Cambridge University Press, 2019) with author Dr Alice Margaria (Max Planck Institute for Social Anthropology) and discussant Michaela Kreyenfeld, Professor of Sociology at the Hertie School. The Event was hosted in cooperation with Max Planck Institute for Social Anthropology, Law and Anthropology Department.
- 04.03.2021, **Migration and the European Convention on Human Rights** (Oxford University Press, 2021) with book editors Prof. Başak Çalı, Prof. Ledi Bianku (University of Strasbourg) and Judge and Prof. Iluia Motoc, European Court of Human Rights and the University of Bucharest, and commentators Prof. Yuval Shany (Hebrew University of Jerusalem) and Vera Wriedt (Hertie School). The event was hosted in collaboration with the European Society of International Law.
- 10.03.2021, **Limits of Supranational Justice: The European Court of Human Rights and Turkey's Kurdish Conflict** (Cambridge University Press, 2020) with author Dilek Kurban, PhD and discussant Prof. Alexandra Huneus (University of Wisconsin).
- 25.05.2021, **The Oxford Handbook of International Refugee Law** (Oxford University Press, 2021). Prof. Hilary Charlesworth (University of Melbourne and Australian National University) engaged in a discussion with the three editors of the Oxford Handbook of International Refugee Law: Prof. Cathryn Costello, Prof. Michelle Foster (University of Melbourne) and Jane McAdam (The University of New South Wales). The event was chaired by Nyadol Nyuon (community advocate, lawyer, writer and a member of the Advisory Committee of Kaldor Centre for International Refugee Law at UNSW Sydney). 225 participants from 60 different countries joined this event hosted online in collaboration with the Refugee Studies Centre (University of Oxford), Peter McMullin Centre on Statelessness (University of Melbourne), and the Kaldor Centre for International Refugee Law (UNSW Sydney).

The Construction of Fatherhood:
The jurisprudence of the
European Court of Human Rights

52 
participants

Migration and the European
Convention on Human Rights

65 
participants

The European Court of Human
Rights and Turkey's Kurdish Conflict

57 
participants

The Oxford Handbook of
International Refugee Law
Convention on Human Rights

225 
participants
60 
countries

Events highlights

Distinguished lecture by Professor Ayelet Shachar: Shifting borders in the time of Covid-19



On 5 May 2021, Ayelet Shachar, Professor of Law, Political Science, and Global Affairs at the University of Toronto, holder of the R.F. Harney Chair in Ethnic, Immigration and Pluralism Studies at the University of Toronto and director of the Harney Program at the Munk School of Global Affairs and Public Policy delivered a lecture at the Centre on 'Shifting borders in the time of Covid-19'.

In her lecture, Prof. Shachar set out her account of the 'shifting border', a new legal cartography of control over borders and movement, and in particular its transformations during the pandemic. She argued that these changes demonstrate that the border is an adjustable legal construct untethered in space. Yet, its shifts also present an opportunity to rethink states' responsibilities to migrants.

Berlin Human Rights Film Festival 2020



The Centre for Fundamental Rights was a partner of the Berlin Human Rights Film Festival 2020 and a main partner in the festival's new Film Forum, a public venue for dialogue on topics related to the festival. The Forum uses the means of film and storytelling to stimulate public discussion on the importance of human rights and the challenges for their protection. The 2020 edition consisted of discussion formats in four key areas: Climate crisis, populism and hate speech, gender and sexual based violence and the Sustainable Development Goals adopted by the United Nations Member States in 2015. Researchers at the Centre contributed legal and academic perspectives to these discussions between filmmakers, people from the arts and policymakers on fundamental and human rights.

CFR at the Berlin Human Rights Film Festival

Panel discussion: Resistance against populism - comparative perspectives. In this panel, civil society practitioners from Germany, Poland and Turkey discussed the effects of populist speech and the strategies of resistance to populism developed in different parts of Europe. Prof. Başak Çalı moderated a conversation with Ezel Buse Sönmezocak, civil society activist and PhD

candidate in public law in Ko University, Istanbul, Hamid Mohseni, consultant at the Mobile Beratung gegen Rechtsextremismus Berlin (MBR) and Małgorzata Szuleka, human rights lawyer and head of advocacy in Helsinki Foundation for Human Rights.

A video recording of the discussion is available [here](#).

The Sustainable Development Goals Conference took place on 5 October 2020 under the title '10 Years to Reach the Sustainable Development Goals' and was organised by the Human rights Film Forum and the German Federal Ministry for Economic Development and Cooperation.

Dr Alexandre Skander Galand, postdoctoral researcher at the Centre, Juan Auz PhD researcher at the Centre and Prof. Pierre Thielbörger, adjunct professor at the Hertie School moderated the panel discussions, which focussed on Sustainable Development Goals (SDGs). Together with renowned experts and storytellers as well as representatives from German politics and civil society, three central questions were discussed throughout the conference: What can we contribute to achieving the Sustainable Development Goals, what challenges are we facing and how can we overcome them?

A video recording of the conference is available [here](#).

Fundamental Rights in Practice

The event series Fundamental Rights in Practice hosts practitioners working in the field of fundamental rights, bringing insights into the areas of policy and advocacy. The Centre hosted six fundamental rights in practice events in 2020/2021.

Spotlight on hotspots and the new EU Migration Pact

With over 140 participants, the Centre hosted this academic year's first **Fundamental Rights in Practice** event on 23 September 2021. This event was a rapid reaction to the new EU-Migration Pact, bringing together diverse voices on refugee protection to offer perspectives on the events in Lesbos, the 'hotspot' approach and the Commission's newly published Pact. Isabel Schayani, journalist and broadcaster, Essam Daod, Co-Founder of Humanity Crew, Daniel Howden, Managing Director of Lighthouse Reports, Minos Mouzourakis, Legal Officer at Refugee Support Aegan and Tineke Strik, Member of the European Parliament for the Dutch Greens, engaged in a conversation with Prof. Cathryn Costello from the Centre for Fundamental Rights, Prof. Itamar Mann from University of Haifa and Prof. Nora Markard from the University of Münster. The event was hosted in collaboration with the Jacques Delors Centre, Hertie School.

A recording of the event is available [here](#).

The human rights costs of the internet shutdowns

On 18 November 2020, the Centre co-hosted a panel discussion on 'The human rights costs of the internet shutdowns' together with Amnesty International and the Centre for International Security at the Hertie School. Mascha Alimardin (Technology and human rights researcher for Iran, Article 19), Raha Bahreini (Iran Researcher, Amnesty International), Likhita Banerji (Researcher and adviser on technology and human rights, Amnesty International) and Anita Gohdes, Professor of International and Cyber Security (Hertie School) explored the very real threat that internet shutdowns pose to the respect of human rights, and the ways in which states – including Iran – are using them to hurt dissent. The event was chaired by Sam Dubberley, (Head of the crisis team, Amnesty International).

Racial borders

On 4 December 2020, the Centre welcomed Tendayi Achiume, the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Professor of Law at the University of California, Los Angeles School of

Law, and research associate of the African Center for Migration and Society at the University of Witwatersrand in South Africa. In her presentation 'Racial Borders,' Prof. Achiume discussed the intersection between racial injustice and migration governance from international law perspective. The event was chaired by Prof. Cathryn Costello.

Listen to the conversation [here](#).



Professors Tendayi Achiume and Cathryn Costello

Corporate accountability for human rights abuses: opportunities and challenges

The event focussed on the opportunities and challenges for holding transnational corporations accountable when they commit human rights abuses, both through litigation before courts as well as through the introduction of domestic legislative frameworks.

Corporate accountability for human rights abuses: Opportunities and challenges

+100 
participants

The discussion with Anna Hoffmann, barrister and Hertie School alumna (MPP'15), Cannelle Lavite, legal advisor at the European Centre for Constitutional and Human Rights (ECCHR) Business and Human Rights Programme and Pierre Thielbörger, Professor of German Public Law and at the Ruhr University Bochum and adjunct professor at the

Hertie School was chaired by Alexandra Lily Kather, Visiting Fellow at the Centre for Fundamental rights and legal consultant in international criminal justice, transitional justice and human rights.

More than 100 people joined the event on 18 March 2021, which was hosted by the Centre together with Hertie School's London Alumni Chapter and in association with the Interest Group on International Human Rights Law of the European Society of International Law.

Human rights case against facial recognition

The event, which took place on 22 April 2021, focused on the challenges that the use of facial recognition technology, as well as its development, sale and deployment, present to the protection of fundamental rights. The discussion was kicked off with a presentation by Markus N. Beeko, Secretary General of Amnesty International in Germany and Chair of the Amnesty Steering Group on Human Rights in the Digital Age. Matt Mahmoudi, a researcher and adviser on artificial intelligence and human rights at Amnesty International, presented Amnesty's #BanTheScan campaign. This was followed by a discussion with commentator Prof. Cathryn Costello and chaired by Anita Gohdes, Professor of International and Cyber Security at the Hertie School. Hosted with the Centre for International Security this event had 70 participants.

An audio recording of the event is available [here](#).



Workshop: Execution of the judgments of the European Court of Human Rights: Taking stock and thinking forward

A policy workshop on challenges for implementing judgments of European Court of Human Rights (ECtHR) drew over 200 experts on 30 April 2021 online, including high-level government officials from ministries of justice and foreign affairs across Council of Europe member states. NGO representatives, lawyers, and researchers also took part.

The event was led by the Centre for Fundamental Rights, in partnership with Middlesex University and the German Federal Ministry of Justice and Consumer Protection, as a flagship event during the German Presidency of the Committee of Ministers of the Council of Europe.

In her opening comments, Marija Pejčinović Burić, Secretary General of the Council of Europe, acknowledged that challenges for implementing judgments undermine the credibility of the ECtHR and the entire Council of Europe's human rights protection mechanisms. The Four-Year Strategic Framework for the Council of Europe has made these challenges a key priority area. The workshop focused on three key challenges: delays, deficiencies, and resistance, bringing together diverse leading scholars and practitioners to explore how to overcome them, and offering policy advice at both the national level and for the Council of Europe.

A video recording of the discussions is available [here](#).

Spotlight on scholarship

Selected publications 2020/2021

- Auz J, 'Situating the Inter-American Human Rights System in the Oscillation of International Law' (2021) 2(1) *Journal of Law and Political Economy* 94.
- Çalı B, 'Autocratic Strategies and the European Court of Human Rights' (2021) 2(1) *European Convention on Human Rights Law Review* 11.
- Çalı B, L Bianku and I Motoc (eds), *Migration and the European Convention on Human Rights* (OUP 2021).
- Çalı B, C Costello and S Cunningham, 'Hard Protection through Soft Courts? *Non-Re-foulement* before the United Nations Treaty Bodies' (2020) 21(3) *German Law Journal* 355.
- Çalı B and AS Galand, 'Towards a Common Institutional Trajectory? Individual Complaints Before UN Treaty Bodies During Their 'Booming' Years' (2020) 24 *International Journal of Human Rights* 1103.
- Çalı B and K Hatas, 'History as an Afterthought: The (Re)discovery of Article 18 in the Case Law of the European Court of Human Rights' in HP Aust and E Demir-Gürsel (eds), *The European Court of Human Rights: Current Challenges in Historical and Comparative Perspective* (Edward Elgar 2021).
- Costello C, 'Overcoming Refugee Containment and Crisis' (2020) 21(1) *German Law Journal* 17.
- Costello C, 'Victim or Perpetrator? The Criminalised Migrant and the Idea of 'Harm' in the Labour Market Context' in Bogg A and others (eds), *Criminality at Work* (OUP, 2020).
- Costello C and I Mann, 'Border Justice: Migration and Accountability for Human Rights Violations' (2020) 21(3) *German Law Journal* 311.
- Costello C, M Foster and J McAdam (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021).
- Costello C and C O'Cinneide, 'The Right to Work of Asylum-Seekers and Refugees' in Costello C, M Foster and J McAdam (eds) *Oxford Handbook of International Refugee Law* (OUP 2021).
- Costello C and Y Ioffe, 'Non-Penalization and Non-Criminalization' in Costello C, M Foster and J McAdam (eds) *Oxford Handbook of International Refugee Law* (OUP 2021).
- Galand AS, 'Bemba and the Individualisation of War: Reconciling Command Responsibility under Article 28 Rome Statute with Individual Criminal Responsibility' (2020) 20 *International Criminal Law Review* 669.
- Galand AS, 'The Crime of Aggression: A Commentary' (2020) 31 *European Journal of International Law* 1176.
- Wriedt V, 'Rezension: 'The Prohibition of Collective Expulsion in International Law' by Riemer' (2021) 54(2) *Kritische Justiz* 255.

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