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Directorate General Human Rights and the Rule of Law, of the Council of Europe
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Human rights challenges in the digital age: Judicial perspectives

Friday, 28 June 2019
European Court of Human Rights, Strasbourg

Seminar marking the retirement of the Jurisconsult of the European Court of Human Rights, Lawrence Early

Information about the intervenors and abstracts of presentations submitted in advance of the conference

Lawrence Early, Jurisconsult of the European Court of Human Rights

Lawrence Early has been the Jurisconsult of the European Court of Human Rights since 2013. As Director of the Directorate of the Jurisconsult, he was responsible, among other things, for advising the Court's judicial formations on case-law matters and assisting the Court to preserve the consistency and coherence of its case-law. Prior to his appointment he served for many years as Registrar of one of the Court's Sections. He also has extensive experience in the Council of Europe's inter-governmental sectors, having been Head of the Media Division of the former Directorate of Human Rights, and actively involved in the areas of data protection and refugee law in the former Directorate of Legal Affairs. Before joining the Council of Europe, Lawrence Early was a lecturer in law in the University of Sheffield. He is also a qualified barrister, having been called to the Bar of Northern Ireland.

Robert Spano, Judge, Vice-President, European Court of Human Rights

Judge Robert Spano was elected to the European Court of Human Rights in 2013 with respect to Iceland and is currently Vice-President of the Court. Before taking up his judicial office he served as Parliamentary Ombudsman of Iceland from 2009-2010 and again in 2013. He served as Dean of the Faculty of Law, University of Iceland, from 2010-2013, and was appointed professor of law in 2006. He was chairman of the Standing Committee of Experts in Criminal Law in the Ministry of Justice from 2003-2009 and from 2011-2013. He was also the Icelandic delegate to the European Committee on Crime Problems and an Independent Expert to the Lanzarote Committee of the Council of Europe. He was

appointed an ad hoc judge of the EFTA Court in 2012. Judge Spano is a graduate of the University of Iceland and of the University of Oxford.

Christos Giakoumopoulos, Director General, Directorate General Human Rights and the Rule of Law, Council of Europe

Christos Giakoumopoulos is Director General of Human Rights and Rule of Law of the Council of Europe since 1 August 2017. He was previously Director of Human Rights from 2011 – 2017 and also Director of Monitoring in the same Directorate General between 2006 - 2011.
Before joining the Directorate General of Human Rights, he was General Counsel and General Director for Legal and Administrative Affairs of the Council of Europe Development Bank (Paris). Since joining the Council of Europe, he held posts in the Registry of the European Court of Human Rights, the Venice Commission and Director in the Office of the Commissioner for Human Rights, A. Gil Robles.

Session I. Freedom of expression in the digital environment: where to put the cursor?

Chair: **Lech Garlicki**, Vice-president of the International Association of Constitutional Law

Judge Lech Garlicki has worked at the Warsaw University since 1968, in the years 1980-1993 was member of the Warsaw Bar, in the years 1993-2001 judge of the Constitutional Court of Poland and in the years 2002-2012 judge of the European Court of Human Right (president of the 4th Section in 2011-2012)
Judge Garlicki was vice-president of the International Association of Constitutional Law (2011-2018) and one of the Founding Members of the European Law Institute. He served recently, as visiting professor, at the Tel Aviv University, Hong Kong University, Yale University, New York University, University of Chicago and Washington University in Saint Louis
He lectured at numerous universities in Europe, the United States, Israel, Japan, China and Hong Kong. He is author or editor of over 300 publications in different languages, including a five-volume Commentary to the 1997 Constitution of Poland and two-volume Commentary to the European Convention on Human Rights.

Panelists: **Darian Pavli**, Judge, European Court of Human Rights:
Balancing free speech and other legitimate interests in the Internet era

(replacing previously announced speaker **Sarah H. Cleveland**,
Louis Henkins Professor of Human and Constitutional Rights, Faculty Co-Director, Human Rights Institute Columbia Law School)

Judge Darian Pavli was elected to the European Court of Human Rights in 2018 with respect to Albania. Before taking up his judicial office in January 2019, he served as senior attorney at the OSCE in Tirana, 1998-2000, and as adjunct lecturer of constitutional law at the University of Tirana. From 2001-

2003 he was a researcher for Human Rights Watch and from 2003-2015 he practiced international human rights law before major international courts and mechanisms. Judge Pavli was a member of the drafting group of the Council of Europe Convention on Access to Official Documents from 2006-2008; member of the drafting group of the Right to Information Model Law for the Organisation of American States in 2010; and lead drafter of the Albanian defamation law reforms in 2012. From 2015-2016 he was advisor to the Special Committee on Justice Reform of the Parliament of Albania. In recent years, Judge Pavli has served as an expert on human rights law and policy for the Council of Europe and other international organisations, including as a member of the Council of Europe's Committee of Experts on Quality Journalism in the Digital Age (MSI-JOQ). Judge Pavli is a graduate of the Central European University in Budapest and the New York University Law School.

Dirk Voorhoof, Professor Emeritus, Human Rights Centre Ghent University and Legal Human Academy:
Same standards, different tools? Protection and limitations of freedom of expression in the digital environment

Prof. em. Ghent University, Human Rights Centre and partner at Legal Human Academy, Dirk Voorhoof holds a Master Degree in Law and in Communication Sciences, and a Ph.D in Law (1990). He was a lawyer at the Brussels Bar (1990-1992), a Member of the Federal Commission for Access to Administrative Documents (1994-2005), of the Flemish Media Council (2005-2012), of the Flemish Regulator for the Media (2006-2016) and of the Executive Board of the European Centre for Press and Media Freedom (ECPMF), Leipzig (2015-2017). He is professor emeritus at Ghent University where he lectured from 1992 to 2016 in the Faculty of Law and Criminology and in the Faculty of Political and Social Sciences, teaching courses on Media Law, Copyright Law, Journalism & Ethics and European Media and Information Law. He also lectured in the Media Law Advocates Programme at the University of Oxford (2000-2007), at Copenhagen University (2004-2017) and Luxembourg University (2017-2019). At multiple occasions he has acted as an expert for the Council of Europe and he regularly reports on developments regarding freedom of expression, media and journalism in Europe, including in Iris, legal newsletter of the European Audiovisual Observatory and Strasbourg Observers. He is a founding member of ECPMF, member of the Human Rights Centre at Ghent University, Legal Human Academy, the Global FOE&I @Columbia experts network, Columbia University, New York, and he was member the Committee of Experts on Internet intermediaries (MSI-NET) of the Council of Europe (2016-2017). He is also a member of the pool of experts in the JUFREX-programma of the EU and Council of Europe on Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (since 2017) and he co-organised with ECPMF and the Council of Europe the Conference on Promoting Dialogue between the European Court of Human Rights and the Media Freedom Community (March 2017). He co-authors the free online e-book Freedom of Expression, the Media and Journalists: Case-law of the European Court of Human Rights (IRIS-Themes) and is co-editor of European Media Law (Collection of Materials), 2018-2019.

Abstract:
Especially since *Ahmet Yildirim v Turkey* (18 December 2012) on the blocking of Google Sites, and the Grand Chamber judgment in *Delfi AS v Estonia* (16 June 2015) on an Internet news platform's liability for user generated content, the jurisprudence of the

European Court of Human Rights (ECtHR) reflects an increasing amount of cases dealing with aspects of freedom of expression in the digital environment. The ECtHR has been confronted with new dimensions, applications and liabilities in relation to the 'duties and responsibilities' following from the exercise of the right of freedom of expression on the Internet and the application of Article 10 ECHR. In *Magyar Jeti Zrt v Hungary* (4 December 2018) *e.g.* the ECtHR refers to the very purpose of hyperlinks to allow Internet-users to navigate to and from online material and to contribute to the smooth operation of the Internet by making information accessible through linking it to each other. Therefore the ECtHR cannot accept a strict or objective liability for media platforms embedding, in their editorial content, a hyperlink to defamatory or other illegal content, as 'hyperlinks, as a technique of reporting, are essentially different from traditional acts of publication'. The ECtHR found that such an objective liability, as it was applied in Hungary with regard to dissemination of defamatory information, 'may have, directly or indirectly, a chilling effect on freedom of expression on the Internet'.
Although the Internet has confronted the ECtHR with new and specific issues related to the right to freedom of expression, the Court leaves no doubt that the basic principles and standards developed in its Article 10 case law in the off line world, are also applicable in the online environment. In *Rebechenko v Russia* (16 April 2019), a case in which a blogger was sanctioned because he had uploaded a video with alleged defamatory content on a YouTube channel, the ECtHR took recently the view that 'the interference must be examined on the basis of the same principles applied when assessing the role of a free press in ensuring the proper functioning of a democratic society'. In other cases however the ECtHR has focused on a more differentiated approach. In *Editorial Board of Pravoye Delo and Shtekel v Ukraine* (5 May 2011) it referred to the fact that 'the Internet is an information and communication tool particularly distinct from the printed media, especially as regards the capacity to store and transmit information. The electronic network, serving billions of users worldwide, is not and potentially will never be subject to the same regulations and control. The risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press. Therefore, the policies governing reproduction of material from the printed media and the Internet may differ. The latter undeniably have to be adjusted according to the technology's specific features in order to secure the protection and promotion of the rights and freedoms concerned'. In *Delfi AS v Estonia* and in *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v Hungary* (2 February 2016) the ECtHR referred to 'the particular nature of the Internet', and that therefore the duties and responsibilities 'may differ to some degree'.
This paper analyses how the ECtHR has integrated and even reinforced basic principles on the right to freedom of expression in the digital environment, while also reflecting the 'technology's specific features' of the Internet. It also attempts to clarify where the European Court has put the cursor and which guiding principles it has developed in some important areas, such as the blocking of websites and of social networking accounts and the liability of online media platforms for user-generated content and hyperlinks.

Christopher Docksey, Hon. Director General, European Data Protection Supervisor (EDPS):

The EU approach to the protection of rights in digital environment: today and tomorrow

Christopher Docksey, Hon. Director-General, EDPS, was a Legal Advisor to

the European Commission until 2010 and then Director of the Office of the EDPS until his retirement in 2017.
In the Commission he worked on labour law and equal opportunities, and then on data protection and anti-fraud. He represented the Commission in cases in these areas before the European Court of Justice and advised on draft legislation and international negotiations on matters such as Safe Harbor, PNR and TFTP. Most recently he represented the EDPS in the Schrems proceedings before the Court.
He is a member of the Guernsey Data Protection Authority and the Advisory Board of the European Centre on Privacy and Cybersecurity at the University of Maastricht Faculty of Law. He is also an editor of the forthcoming OUP Commentary on the EU General Data Protection Regulation.

Abstract:
EU privacy and data protection law: Articles 7 and 8 of the Charter of Fundamental Rights, Article 16 TFEU, including positive obligation on legislator to act, Article 39 TEU, Regulation 2016/679 (GDPR), Directive 2016/680 (LED), Regulation 1725/2018 (EUDPR), ePrivacy Directive 2002/58 / draft ePrivacy Regulation.
The significance of the Charter since the Treaty of Lisbon creating creating a 'Europe of rights and values': affording constitutional status to the right of data protection, and the application of the new fundamental right of data protection by the CJEU.
The significance of the GDPR: greater harmonisation (a regulation), with continuity of existing principles (system of checks and balances, the 'rules of the road'), strengthened rights and obligations, including greater accountability of controllers, strengthened supervision and enforcement, and new provisions on consistency and governance:
Obligations (controllers): scope, fair and lawful processing, consent and purpose limitation, information, sensitive data, Accountability, data protection by design and default, data protection impact assessments, data protection officers, security confidentiality and data breach notification, international transfers;
Rights (data subjects) transparency and control: access, portability, profiling, rectification, blocking, erasure/right to be forgotten, objection;
Enforcement and governance*:* independent supervisory authority, one-stop shop, consistency mechanism, European Data Protection Board, administrative fines.
Together with a substantial increase in the level of data protection in law enforcement (LED).
The hardwiring of other fundamental rights into data protection and the GDPR – see recital 4:
'The processing of personal data should be designed to serve mankind… This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private life and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy ...'
- The principle of balancing fundamental rights on a case by case basis: Case C-275/06 *Promusicae*
- Freedom of expression: what expression is protected = journalism (Article 85 GDPR) – Case 73/06, *Satamedia* (and *Satakunnen and Satamedia vs Finland*),Case C-345/17, *Buivids*
- Freedom of information: the right to know vs the right to be forgotten - Case C-

131/12 *Google Spain*, Case C-398/15 *Manni*, Case C-136/17 *G.C. v CNIL*, Case C-507/17 *Google v. CNIL*

- Freedom of religion: protected under the Treaty, but not excluded from respect for other fundamental rights: Case C-25/17 *Jehovan todistajat*

Individual surveillance / profiling - cookie walls, representative complaints to supervisory authorities (GDPR Article 80), Case C-673/17 *Planet 49*

State surveillance / profiling : the chilling effect of surveillance on freedom of expression and information (*Malone vs UK*, Joined Cases C-203/15 and C-698/15 *Tele2*: data liable to allow very precise conclusions to be drawn on private lives of persons whose data retained, give feeling that under constant surveillance, effect use of communications and right to freedom of expression) and the scope for the fundamental rights to privacy and data protection to complement and reinforce freedom of expression:

- Joined Cases C-293/12 and C-594/12 *Digital Rights*: mentioned but not applied;
- *Tele2*: incorporated into the reasoning (only serious crime can justify such a serious interference) but again not yet specifically applied.

The future – the missing leg of the triple reform– the proposed ePrivacy Regulation:

- the difference between exceptions and restrictions, Case C-207/16 *Ministerio Fiscal*, and the limits of EU law, Case C-623/17 *Privacy International*
- Improvements in the Commission proposal: greater harmonisation (a Regulation, like the GDPR), confidentiality obligation extended to OTT providers, enforcement by DPAs;
- Further improvements required: tracking walls and exclusion of users of ad-blocking, privacy by default re. terminal equipment and software, WiFi tracking, and limited restrictions subject to safeguards;
- Possible retrograde changes: option of enforcement by telecoms regulators, mandatory data retention, subsequent compatible purpose.

Session II. Determining jurisdiction in the World Wide Web: the case of data protection

Chair:

Eleanor Sharpston, QC, Advocate General at the Court of Justice of the European Union

Born 1955; studied economics, languages and law at King's College, Cambridge (1973-77); university teaching and research at Corpus Christi College, Oxford (1977-80); called to the Bar (Middle Temple, 1980); Barrister (1980-87 and 1990-2005); Legal Secretary in the Chambers of Advocate General, subsequently Judge, Sir Gordon Slynn (1987-90); Lecturer in EC and comparative law (Director of European Legal Studies) at University College London (1990-92); Lecturer in the Faculty of Law (1992-98), and subsequently Affiliated Lecturer (1998-2005), at the University of Cambridge; Fellow of King's College, Cambridge (1992-2010); Emeritus Fellow (2011 -); Senior Research Fellow at the Centre for European Legal Studies of the University of Cambridge (1998-2005); Queen's Counsel (1999); Bencher of Middle Temple (2005); Honorary Fellow of Corpus Christi College, Oxford (2010); LL.D (h.c.) Glasgow (2010), Nottingham Trent (2011) and Stockholm (2014); Advocate General at the Court of Justice from 11 January 2006.

Panelists: **Siofra O'Leary**, Judge, European Court of Human Rights:
Questions of jurisdiction and data protection before the ECtHR

Judge Síofra O'Leary, BCL (University College Dublin), PhD (European University Institute) was sworn in as a Judge at the European Court of Human Rights in July 2015.
Prior to joining the European Court of Human Rights, Judge O'Leary worked for 18 years at the Court of Justice of the European Union, where she served as a référendaire and Chef de cabinet for Judges Aindrias Ó Caoimh, Fidelma Macken and Federico Mancini. She later ran part of that Court's Research Directorate.
Judge O'Leary has been a Visiting Professor at the College of Europe in Bruges for many years where she has taught LLM courses on EU law and the individual, EU Social Law and Policy and now a judicial workshop.
She has, in recent years, been a member of the Editorial Board of the Common Market Law Review and is now a member of both its Advisory Board and the Board of the Irish Centre for European Law. In 2016 she was elected an Honorary Bencher of the Honorable Society of King's Inns.
Before joining the Court of Justice of the European Union, Siofra O'Leary was the Assistant Director for the Centre of European Legal Studies at the University of Cambridge and a Fellow of Emmanuel College. She was previously a Visiting Fellow at the Faculty of Law, University College Dublin, a Postdoctoral Fellow at the University of Cádiz, Spain and a Research Associate at the Institute for Public Policy Research in London.
She is the author of two books entitled The Evolving Concept of Community Citizenship (Kluwer, 1996) and Employment Law at the European Court of Justice (Hart Publishing, 2001) and has published extensively in academic journals and monographs on the protection of fundamental rights, EU employment law, the free movement of persons and services and EU citizenship.

Bertrand de la Chapelle, Executive Director, Internet & Jurisdiction Policy Network, Paris:
Territorial jurisdiction vis-à-vis the cross-border nature of the internet

Bertrand de La Chapelle is the Executive Director and Co-founder of the Internet & Jurisdiction Policy Network. He has been a determined promoter and pioneering implementer of multi-stakeholder governance processes for more than 15 years, building upon his diversified experience as a career diplomat, civil society actor and tech entrepreneur. He was previously a Director on the ICANN Board (2010-2013), France's Thematic Ambassador and Special Envoy for the Information Society (2006-2010) and an active participant in the World Summit on the Information Society (2002-2005), where he promoted dialogue among civil society, private sector and governments. Bertrand is a frequent speaker in major Internet governance processes such as the Internet Governance Forum.
As an engineer, Bertrand was in the 1990s the Co-founder and President of the virtual reality company Virtools, now a subsidiary of Dassault Systèmes. Bertrand de La Chapelle is a graduate of Ecole Polytechnique (1978), Sciences Po Paris (1983), and Ecole Nationale d'Administration (1986).

Faiza Patel, co-director of the Liberty and National Security Program at the Brennan Center, New York University School of Law:

Judicial safeguards against transnational surveillance and jurisdiction issues: the US point of view

Faiza Patel serves as co-director of the Brennan Center's Liberty and National Security Program, which seeks to ensure that our counterterrorism laws and policies respect constitutional values and promotes transparency and accountability in national security matters. She has testified before Congress opposing the dragnet surveillance of Muslims, developed legislation creating an independent Inspector General for the NYPD, and organized advocacy efforts against anti-Muslim laws and policies. She has authored and co-authored ten reports: Social Media Monitoring: How the Department of Homeland Security Uses Digital Data in the Name of National Security (2019), Extreme Vetting and the Muslim Ban (2017), Trump-Russia Investigations: A Guide (2017), The Islamophobic Administration (2017), Countering Violent Extremism (2017), Overseas Surveillance in an Interconnected World (2016), What Went Wrong with the FISA Court (2015), Foreign Law Bans (2013), A Proposal for an NYPD Inspector General (2012), and Rethinking Radicalization (2011). Ms. Patel's writing has been featured in major newspapers including The New York Times and The Washington Post, and she is a frequent commentator on national security and counterterrorism issues for print, televisions, and radio outlets. She is a member of the Board of Editors of the legal blog Just Security. Born and raised in Pakistan, Ms. Patel is a graduate of Harvard College and the NYU School of Law.

Abstract:

Edward Snowden's 2013 revelations concerning the National Security Agency's broad surveillance programs triggered a wave of reforms, including some that were intended to boost judicial review of foreign intelligence surveillance by U.S. courts. Nonetheless, judges remain reluctant to impose constraints on this type of surveillance as demonstrated by decisions by the Foreign Intelligence Surveillance Court (FISC) and regular federal courts in the last several years.

The USA Freedom Act of 2015 included a provision requiring the FISC and its appellate body, the Foreign Intelligence Court of Review to appoint an amicus in any case presenting "novel or significant interpretation of the law." Reformers hoped that the provision would push the courts to hear and consider privacy and civil liberties perspectives that lead it to impose constraints on the surveillance programs. Since 2015, amici have been appointed to serve on 14 occasions, though information is publicly available about only 6 cases involving amici. While it is not possible to firmly assess the impact of amici without knowing the full extent of the courts' docket, a review of the publicly available decisions suggests that amicus participation has not resulted in the more rights-protective decisions that reformers sought. For the most part, the FISC and the Court of Review have continued to accept the government's arguments for expansive authorities, relying on the principles and rules articulated in pre-Snowden decisions.

The possibility of amicus participation has, however, led the government to withdraw or modify at least 6 applications for surveillance, although it is not known whether these involved individual applications or those affecting mass surveillance programs. There are also indications that the NSA is considering eliminating some aspects of two well-known mass surveillance programs – those conducted under Section 215 of the Patriot Act (as modified by the 2015 USA Freedom Act) and Section 702 of the FISA Amendments Act of 2008. This may be attributable, at least in part, to increased scrutiny by the FISC of the government's fidelity to constraints imposed by the court.

Regular federal courts have also increasingly been in a position to review NSA surveillance programs. Although these cases are still winding their way through the court system, those challenging the programs have not yet met with success. Two main types of cases have been brought. First, the government has started giving notice to criminal defendants that evidence collected against them was acquired under Section 702 of the FISA Amendments Act of 2008, allowing them to collaterally challenge the constitutionality of the program. Thus far, seven defendants have mounted such challenges, but none have been successful. Currently, just one appeal is pending in these cases. Second, two major cases are challenging the surveillance directly. Plaintiffs in one longstanding case brought by the Electronic Frontier Foundation recently suffered a defeat when the trial court dismissed on account of the government's assertion that proceeding would lead to potentially harmful disclosures of national security information. An appeal is expected. Another, newer, suit brought by the American Civil Liberties Union on behalf of Wikimedia also challenges the NSA's Section 702 surveillance program. As in the EFF case, the government has asserted the state secrets privilege in an attempt to block the litigation from moving forward.

Overall, one sees an extreme reluctance by courts to intervene in surveillance programs that relate to foreign intelligence surveillance, which in keeping with the general tradition of judicial deference to the government in cases involving national security interests.

Session III. Big Data, big legal questions

Chair: **Mario Oetheimer**, Deputy Head of Research & Data Unit, European Union Agency for Fundamental Rights

Dr Mario Oetheimer (Twitter: @MOetheimerFRA (link is external)) is Deputy Head of Research and Data Unit. Since joining the EU Agency for Fundamental Rights (FRA) in 2009, he has coordinated its work in the area of information society, privacy and data protection, managing, inter alia, the Agency's research project on National intelligence authorities and surveillance in the EU. His areas of expertise with respect to FRA's work include: artificial intelligence, data protection, freedom of expression and international human rights law, in particular the European Court of Human Rights' case law. He previously worked for the Council of Europe for 13 years, first with its media division and then with the research division of the European Court of Human Rights. He holds a PhD in public law, and is the author of the book Harmonisation of Freedom of Expression in Europe (2001) in French. He has authored several articles on freedom of expression and the European Court of Human Rights.

Panelists: **Nico van Eijk**, Director of the Institute for Information Law (IViR), Faculty of Law, University of Amsterdam:

What are the main legal questions for Big Data? Regulation of data collection and handling. Implications for other rights

Nico van Eijk (1961) is Professor of Media and Telecommunications Law and Director of the Institute for Information Law (IViR, Faculty of Law, University of Amsterdam). He studied Law at the University of Tilburg and received his doctorate from the University of Amsterdam (on government interference with broadcasting). His fields of research include media, telecommunications, privacy, freedom of expression, national security/surveillance and internet related topics such as internet governance, digital platforms and net neutrality. For more information about his work: https://www.ivir.nl/employee/eijk/.
He also works as an independent legal adviser. He advises/advised law firms, companies and (semi) governmental organizations. For more than twenty years, he has been active in the financial sector (telecom and media transactions).
Among other things, he is chairman of the Dutch association for Media and Communications Law (VMC), a member of the knowledge network of the Dutch Review Committee on the Intelligence and Security Services (CTIVD), chairman of a committee on Paid Electronic Information Services of The Social and Economic Council of the Netherlands (SER) and member of the Royal Holland Society for Sciences and Humanities (KHMW)

Abstract:
Often data are seen as the exclusive domain of privacy and data protection. This is an understatement, the relevance of data also impacts other rights including freedom of expression, the right to assembly and fair trial rights. There is growing concern from the perspective of consumers and markets; and big data create new challenges for education, social welfare and democracy concepts. To illustrate the broader context of data, the presentation will address selected topics to underline the need for such contextualization.

Tim Eicke, Judge, European Court of Human Rights:

Big Data and the ECtHR – the acquisition, use and disposal of data by private internet intermediaries and the case-law of the Strasbourg Court

Tim Eicke studied law at the University of Passau, Germany, 1986-1988, and took his LL.B. (Hons) at the University of Dundee, United Kingdom, 1988-1992.
He became a Barrister in London in 1993, a QC in 2011 and a Bencher of Lincoln's Inn in 2014. Since 12 September 2016, he is the Judge of the European Court of Human Rights elected in respect of the UK.
He is a Member of the American Society of International Law and of the Public International Law Advisory Panel of the British Institute of International and Comparative Law ("BIICL"). He holds an Honorary doctorate from the University of Dundee (2017).

Lorna McGregor, Professor, University of Essex Law School, Director of the Human Rights Centre and PI, Director of the ESRC Human Rights, Big Data and Technology (HRBDT) project:
Big data, technology and human rights. The right to be forgotten: what are the possible technological methods and valid criteria for erasure?

Lorna McGregor is a Professor of International Human Rights Law and Director of the Human Rights Centre at the University of Essex. Lorna's current research focuses on big data, artificial intelligence (AI) and human rights; all forms of detention under international law; access to justice and remedies under international law; and the position and effects of international human rights law within public international law and in dealing with global challenges. She is the PI and Director of the multidisciplinary ESRC Human Rights, Big Data and Technology (HRBDT) project. Her research has been funded by the British Academy, the ESRC and the Nuffield Foundation. Lorna is a Co-Chair of the International Law Association's Study Group on Individual Responsibility in International Law and a Contributing Editor of EJIL Talk!. She has held positions as a Commissioner of the British Equality and Human Rights Commission (2015 - 2019) and as a trustee of the AIRE Centre. Prior to becoming an academic, Lorna held positions at REDRESS, the International Bar Association, and the International Centre for Ethnic Studies in Sri Lanka.

Abstract:
Current legal scholarship and practice tends to focus on the human rights' implications of artificial intelligence (AI). This reflects a shift away from earlier attention to big data, data protection and the entry into force of the GDPR. However, a number of issues on the regulation and judicial approaches to big data – upon which AI relies – remain. This paper analyses the adequacy of the GDPR and related provisions to deal with the human rights' implications of big data as the 'fuel' to AI and identifies the gaps that still remain. It makes proposals as to how human rights bodies, such as the European Court of Human Rights, can address the human rights issues arising from the collection, storage and use of big data.