

Facultaire Toogdag 2023: Panel Effective Protection of Fundamental Rights in a pluralist world (EPFR)

Paneltitle:

Fundamental Rights in an Ongoing War: Digital Open-Source Information, Missing Persons, and the Council of Europe

Format: all presentations consist of 15 minutes presentation, followed by 15 minutes Q&A

FIRST PRESENTATION

Henning Lahmann, eLaw

Open-Source Investigations to Counter-Narrate Russia's Abuse of Fundamental Rights Discourse

In the context of Russia's aggression against Ukraine, many scholarly observers noted the invader's reliance on justifications within the doctrinal framework of international law to rationalize its use of force. Much of these justifications, however, relied on a blatant abuse of fundamental rights discourse, falsely accusing Ukraine of systematically violating the rights of ethnically Russian citizens in its eastern regions up to the point of imminent genocide. The research investigates how in order to counter this narrative, civil society actors have made strategic use of the increasing ubiquity of digital open-source information, exposing Moscow's disinformation in the weeks prior to and after the beginning of the invasion in February 2022. The presentation demonstrates the ways in which this emerging practice has started to shape international legal discourse at the United Nations and in other deliberative international fora, compelling states in these political-legal processes to reconfigure their approach to the role of facts that were previously only accessible through privileged access to intelligence.

SECOND PRESENTATION

Esther van Eijk, independent researcher

Nadia Sonneveld, Van Vollenhoven Institute for Law, Governance and Society

Accounting for All the Missing in Ukraine? Evidence and Information, the Rights of Families, and the Search for Justice

Following Russia's invasion in Ukraine in February 2022, thousands are believed to have gone missing. Among the missing are Ukrainians and non-Ukrainians, including journalists, foreign combatants and Russian Federation soldiers. Legal mechanisms to search for missing persons were already in place prior to the latest invasion, for example when Ukraine adopted The Law of Ukraine on the Legal Status of Missing Persons in July 2018. Following this law, a commission on missing persons and a central register for missing persons were established. Despite the existence of these legal mechanisms, two future thorny questions

remain. First, how to safely collect and manage confidential information provided by witnesses and relatives? Second, how to solve the tension between the right of families to be informed about the fate and whereabouts of the missing, and the legal needs of international and domestic criminal justice institutions? Based on earlier experiences in former post-conflict countries, we will reflect on the profoundly important question of what justice is in a context where people go missing due to conflict.

THIRD PRESENTATION

Rick Lawson, Europa Instituut

Weathering a storm in uncharted waters – The Council of Europe and the Russian invasion of Ukraine

The Russian invasion of Ukraine on 24 February 2022 led the Council of Europe to adopt an unprecedented decision: on Wednesday 16 March 2022, the Committee of Ministers decided to expel the Russian Federation from the organisation. So within weeks, far-reaching decisions were taken, under great political pressure and with no established practice to fall back on. It may not come as a surprise, therefore, that the hinges creaked a little as the exit door – which had remained closed for over 70 years – opened and Russia was led out. In this part of the panel we will look back and we will look ahead. Looking back, we will address some of the questions that emerged as the Council of Europe proceeded to exclude the Russian Federation. Looking ahead, we will try to map the way ahead. To what extent is Russia still bound by the treaties that it ratified in the context of the Council of Europe? Does the European Convention on Human Rights have any significance for the war that Russia is inflicting? What should happen with the 17,050 cases against Russia that are currently pending before the European Court of Human Rights?