

Human Rights Law Journal · HRLJ

HRLJ

31 December 2020

Vol. 40 No. 1-12

ISSN 0174/4704

Pages 1-480

1. ARTICLES

Linos-Alexander Sicilianos, Athens

Evolutionary Interpretation of the ECHR and Beyond:

Recent developments in the case-law of the European Court of Human Rights 1

Julia Hänni, Lausanne

The Prospects of Climate Litigation before the European Court of Human Rights:

Prerequisites and Possible Challenges..... 5

Hans-Jörg Behrens, Berlin

Forum Shopping – A Challenge for International Human Rights Protection 24

Mikhail Galperin, Moscow

Politicising Law or Legalising Politics? Justiciability and the ‘Political Question’ Doctrine
in International Justice 29

2. DECISIONS and REPORTS

UN Human Rights Committee (UN-HRCee), Geneva

– 19.X.20 – Child born in the Netherlands registered with the annotation “unknown nationality” /
National legal order did not foresee to correct registration as “stateless” which would have
allowed international protection / Right of the child to acquire nationality (Article 24 of the
Covenant) violated / *D.Z. v. Netherlands*..... 35

– 13.III.20 – Failed search and rescue operation at sea on 11 October 2013 – over 200 people died: Event
occurred outside the territorial waters of Malta but within its Search and Rescue (SAR)
Zone / Jurisdiction affirmed / Communication declared inadmissible due to non-exhaustion
of domestic remedies / *A.S. et al. v. Malta* 41

– 4.XI.20 – Failed search and rescue operation at sea on 11 October 2013 – over 200 people died:
Event occurred outside the territorial waters of Italy / Jurisdiction affirmed, based on
factual elements such as ongoing involvement of the Maritime Rescue Coordination Centre
in Rome after having answered the first distress call / Violation of the right to life in its
substantive as well as its procedural aspects (Article 6 para. 1 alone and in conjunction with
Article 2 para. 3 of the Covenant) / *A.S. et al. v. Italy* 48

International Court of Justice (ICJ), The Hague

– 23.I.20 – Provisional measures ordered under the Convention on the Prevention and Punishment of
the Crime of Genocide in relation to the members of the Rohingya group in the territory of
Myanmar / *The Gambia v. Myanmar* 58

Inter-American Court of Human Rights (IACourtHR), Costa Rica

– 6.II.20 – Interpretation of Article 26 ACHR (progressive development): Rights to a healthy
environment, to adequate food, to water and to take part in cultural life / here: Violation of
Article 26 ACHR (3:3 ratio of votes) / Far-reaching measures ordered to be accomplished
over the next six years / *Indigenous Communities of the Lhaka Honhat (Our Land)
Association v. Argentina* 71

– 24.VI.20 – Sexual harassment and abuse in schools as a “known problem” which was “validated,
normalized and tolerated” within a structural context by educational institutions / Victim
committed suicide: the girl Paola, aged between 14 and 16 years, suffered serious acts of
sexual violence perpetrated by the Vice Principal of her school / State’s lack of diligence
in arresting the fugitive defendant, resulting in impunity / Violation of numerous human
rights / *Guzmán Albarracín et al. v. Ecuador*..... 163

– 15.VII.20 – State’s responsibility for violations of human rights as a result of acts committed by a private
enterprise which led to the death of 60 people, who included 20 children / Scope of the right
to conditions of work that ensure the safety, health and hygiene of the workers in light of
Article 26 ACHR (progressive development) / *The Workers of the Fireworks Factory in
Santo Antônio de Jesus and their families v. Brazil* 203

(Contents continued on next page)



N. P. Engel, Publisher

www.hrlj.info

e-mail: N.P.Engel@HRLJ.info

Human Rights Law Journal

HRLJ · and continuation of The Human Rights Review

Editorial Advisory Board:

Thomas Buergenthal, Washington, D.C. · Antônio Cançado Trindade, The Hague · Hans Danelius, Stockholm · Tim Eicke, Strasbourg · Jochen Abr. Frowein, Heidelberg · Anatoly Kovler, Moscow · Paul Mahoney, Strasbourg · Jörg Paul Müller, Bern · Willibald P. Pahr, Vienna · Guido Raimondi, Rome · Sonia Picado Sotela, San José (Costa Rica) · The Right Hon. Lord Mance, London · William A. Schabas, London · Christian Tomuschat, Berlin · U.O. Umzurike, Calabar

Editor-in-Chief: Erika Engel

Associate Editor: John Packer, Ottawa

Table of Contents Vol. 40 (2020) No. 1-12 (continued)

European Court of Human Rights (ECtHR), Strasbourg	
- 29.V.20 – Interpretation of Article 7 ECHR (<i>nulla poena sine lege</i>): the use of the “blanket reference” or “legislation by reference” technique in criminalising acts or omissions is not in itself incompatible with Article 7 ECHR / <i>Advisory Opinion according to Protocol 16 rendered at the request of the Armenian Constitutional Court</i>	292
- 26.V.20 – Hate crime – decapitation of an Armenian military officer, G.M, with blows of an axe – committed in Hungary by an Azerbaijani military officer, R.S., who was sentenced to life imprisonment, which he served for six years in a Hungarian prison / Azerbaijan violated the Convention by releasing the extradited officer R.S. / <i>Makuchyan and Minasyan v. Azerbaijan and Hungary</i>	305
- 4.VIII.20 – Acid attack on open road in Tirana in 2009 causing 25 % burns on the applicant’s face and upper body / Unidentified assailant / Investigation stayed in 2010 / Violation of the procedural limb of the right to life (Article 2 ECHR) / <i>Tërshana v. Albania</i>	331
- 10.XI.20 – Pre-trial detention of journalists and managers of the daily newspaper Cumhuriyet (“The Republic”) based on mere suspicion and not on the existence of factual evidence / The applicants did not support the use of violence and terror for political ends / Violation of ECHR Article 5 § 1 (right to liberty) and Article 10 (freedom of expression) / <i>Sabuncu et al. v. Turkey</i>	346
- 28.IV.20 – Media Act (here applied to a TV channel) prohibits communication of any “opinion” by a newsreader in order to ensure unbiased news and political information / Unforeseeable restriction of the right to freedom of expression / Violation of Article 10 ECHR / <i>ATV Zrt v. Hungary</i>	384
- 5.V.20 – Applicant’s removal as the chief prosecutor of the National Anticorruption Directorate before the end of her second mandate following her criticism of legislative reforms in the area of corruption / Right to fair trial and freedom of expression violated (Articles 6 § 1 and 10 ECHR) / <i>Kövesi v. Romania</i>	390
- 14.I.20 – Recognition and enforcement of judgments in matters of parental responsibility after abduction of a child by the mother / Political interference and long delays in Lithuania’s return of a daughter to her German father / “Procedural vagaries” contradicted the aims of international and European Union rules of child custody / Violation of the right to respect for private and family life (Article 8 ECHR) / <i>Rinau v. Lithuania</i>	413
Court of Justice of the European Union (CJEU), Luxembourg	
- 16.VII.20 – Processing of personal data / Protection provided by the EU-US Privacy Shield inadequate / <i>Data Protection Commissioner v. Facebook Ireland Ltd and Maximillian Schrems</i>	448
3. DOCUMENTATION	
European Commission for Democracy through Law (Venice Commission), Strasbourg	
- 18.VI.20 – Opinion No. 981/2020: Execution of ECtHR judgments regarding cases v. Russia / Evaluation of the March 2020 draft amendments to the Russian Constitution	468
International Commission of Jurists (ICJ), Geneva	
- 1.V.20 – Declaration: “Withdrawal of States from African Court a Blow to Access to Justice in the Region”	478
4. PENDING PROCEEDINGS	
European Court of Human Rights (ECtHR), Strasbourg	
- 21.VIII.20 – The Court grants interim measure in the case of <i>Aleksey Navalnyy v. Russia</i>	478
- 24.III.20 – Risk of life imprisonment without parole and inadequate conditions of detention due to the Covid-19 pandemic in case of extradition to the USA / <i>Hafeez v. United Kingdom</i>	479

