

Human Rights Law Journal · HRLJ

HRLJ

31 August 2021

Vol. 41 No. 1-8

ISSN 0174/4704

Pages 1-328

XVIII Congress of the Conference of European Constitutional Courts (CECC) Prague 2021

International and Supranational Catalogues of Human Rights in Theory and in Practice

- Video message by **Robert Spano**, President of the European Court of Human Rights, Strasbourg..... 1
- Video message by **Koen Lenaerts**, President of the Court of Justice of the European Union, Luxembourg 4

Selected Issues

- Christoph Grabenwarter**, Vienna – The Right to Life before European Constitutional Courts 7
- Stephan Harbarth**, Karlsruhe – Specifics of Germany's Catalogue of Human Rights and the History of its Application in the Case-Law of the German Federal Constitutional Court..... 9
- Christine Langenfeld** and **Henning Radtke**, Karlsruhe – National Report: Germany 13

2. DECISIONS and REPORTS

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

- 9. XI. 20 – “The obligations in matters of human rights of a State that has denounced the American Convention on Human Rights and the Charter of the OAS” / Colombia's request for an Advisory Opinion as rephrased by the Court / *OC-26/20*: An example how the Court interprets its advisory functions / Background: Venezuela's withdrawal from the inter-American system 29

European Court of Human Rights (ECtHR), Strasbourg

- 1. XII. 20 – “Tribunal established by law” / Case-law principles clarified / Violation of Article 6 ECHR / *Guðmundur Andri Ástráðsson v. Iceland (GC)* 67
- 8. IV. 21 – Compulsory childhood vaccination / No violation of the right to respect for private life (Article 8 ECHR) / *Vavříčka et al. v. Czech Republic (GC)* 126
- 25. V. 21 – Deficiencies in the bulk interception regime operated under the Investigatory Powers Act 2000 / *Big Brother Watch et al. v. United Kingdom (GC)* 164
- 16. II. 21 – Investigation following the lethal airstrike near Kunduz in 2009 in the context of NATO operations in Afghanistan did not breach the Convention / *Hanan v. Germany (GC)* 241

Court of Justice of the European Union (CJEU), Luxembourg

- 18. V. 21 – Interference with the independence of the judiciary / Personal liability of judges for judicial errors / Risk of political control over the activity of those judges / Six requests for a preliminary ruling / Joined Cases *Asociația Forumul Judecătorilor din România et al.* 275

German Federal Constitutional Court, Karlsruhe

- 24. III. 21 – Climate change – Climate neutrality / Intertemporal guarantees of freedom / Duty to protect life and health / State's obligations regarding future generations 299

3. DOCUMENTATION

Council of Europe Commissioner for Human Rights, Strasbourg

- 10./23.VIII.21 – Observance of human rights standards in times of emergency / here: Situation at Lithuania's border with Belarus / Letter of the Commissioner for Human Rights, Dunja Mijatović, to the Prime Minister of Lithuania, Ingrida Šimonytė, and the Prime Minister's reply 326

4. PENDING PROCEEDINGS

European Court of Human Rights (ECtHR), Strasbourg

Two cases communicated regarding climate change:

- 13. XI. 20 – *Duarte Agostinho et al. v. Portugal and 32 other States* 328
- 17. III. 21 – *Verein KlimaSeniorinnen Schweiz et al. v. Switzerland* 328



N. P. Engel, Publisher

www.hrlj.info

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

**XVIII Congress of the Conference
of European Constitutional Courts (CECC)**

Prague 2021

International and Supranational Catalogues of Human Rights in Theory and in Practice

● Video message by Robert Spano , President of the European Court of Human Rights, Strasbourg	1
● Video message by Koen Lenaerts , President of the Court of Justice of the European Union, Luxembourg	4
Selected Issues	
Christoph Grabenwarter , Vienna – The Right to Life before European Constitutional Courts	7
Stephan Harbarth , Karlsruhe – Specifics of Germany’s Catalogue of Human Rights and the History of its Application in the Case-Law of the German Federal Constitutional Court	9
Christine Langenfeld and Henning Radtke , Karlsruhe – National Report: Germany.....	13

**INTERNATIONAL AND SUPRANATIONAL CATALOGUES OF HUMAN RIGHTS
IN THEORY AND IN PRACTICE**

Robert Spano*

President of the European Court of Human Rights, Strasbourg

Dear Presidents, dear Judges,

It is an honour for me to address your Congress today by way of this video message recorded in the European Court of Human Rights in Strasbourg. Members, observers and guests, connecting from your homes, and to the organisers in Prague, I would like to extend my warmest greetings from afar. I salute the valiant efforts of President Pavel Rychetský and his team from the Constitutional Court of the Czech Republic in organising and reorganising this event finally in its current online form. I know how difficult it is to organise large events at the moment. At the Court we have also decided to postpone our annual Judicial Seminar and Opening of the Judicial Year, which normally takes place every January, to September this year.

You have chosen a particularly interesting theme for your 18th Congress, namely the relationship between international, supranational and national “catalogues” of human rights in the 21st century. I think we can all agree that there exists a multi-level human rights protection in Europe today which demonstrates its richness. However, could one say that Europe’s architecture of human rights protection is also a “crowded house”? The existence of parallel, but complementary, protection mechanisms are, I believe, a source of enrichment and enhancement of the universal protection of human rights. However, where the interpretation of the provisions in the different human rights instruments is perceived either as unclear or as inconsistent, some may consider that there is a potential for their becoming a source of uncertainty for States Parties or for individuals.¹ The aim of your Congress as I understand it, is to analyse and rationalise these differing catalogues of rights and their relationship with one another.

Here I am reminded of a speech given in 2014 at an Opening of the Judicial Year by former President of the German Federal Constitutional Court, Prof. Dr. Andreas Voßkuhle.² He looked at the relationship between European constitutional courts and the European Court of Human Rights and the Court of Justice of the European Union.

He asked whether the relationship between the national constitutional courts and the European courts could be compared to a pyramid or a mobile. By mobile, he was not referring to a telephone, but “a kinetic sculpture which consists of an ensemble of balanced parts that can move but are connected by strings or wire.” By pyramid he referred to a fixed geometric structure that has a base and a top. His conclusion was that European human rights protection was better understood as “mobile”; constitutional courts and the European courts have distinct but complementary roles which are inherently linked one to the other. I think it is useful to have these two images in our minds in our discussions during this session.

* Video message of 25 February 2021, XVIII Congress of the Conference of European Constitutional Courts (CECC), Prague, Czech Republic.

¹ See The Place of the ECHR in the European and International Legal Order, Report of the Steering Committee for Human Rights (CDDH) adopted at its 92nd meeting (26-29 November 2019), <https://rm.coe.int/place-of-the-echr-in-the-european-and-international-legal-order/1680a05155>

² See Andreas Voßkuhle, *Pyramide or Mobile? – Human Rights Protection by the European Constitutional Courts*, https://www.echr.coe.int/Documents/Dialogue_2014_ENG.pdf#page=36; see also 34 HRLJ pp. 1-3 (2014).