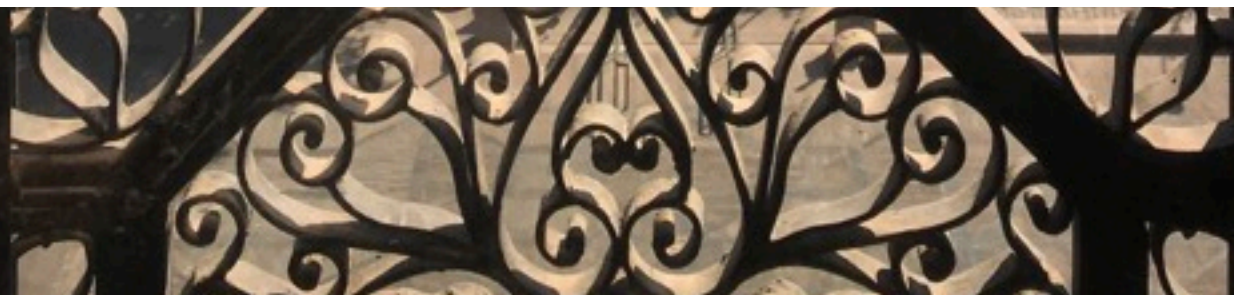




NETWORK EAST-WEST BERLIN-YEREVAN

AUGUST 2017



SPONSORED BY...

Paul-Mintz Gesellschaft e.V.

Meyer-Struckmann- Stiftung

HUMBOLDT-UNIVERSITÄT ZU BERLIN



NETWORK EAST-WEST

Law Faculty of the Humboldt-University

Unter den Linden 9

10099 Berlin

Project Supervisor: Prof. Dr. Martin Heger

>>This Journal was printed in the Humboldt University print office.

FOREWORD



Liebe Studierende,

auch in diesem Jahr ist das Netzwerk Ost-West durch rechtsvergleichende Seminare mit unseren Partnerfakultäten bereichert worden. Dabei setzten sich 60 Berliner Studierende sowie zwölf studentische OrganisatorInnen und zwölf TutorInnen der Humboldt-Universität engagiert für die erfolgreiche Durchführung der Austauschseminare ein.

Erfreulicherweise konnten dieses Jahr gleich sechs Kooperationen gelingen.

Dazu machten sich je 14-köpfige Delegationen nach intensiver Vorarbeit in Berlin auf den Weg zu unseren Partnern an der Latvijas Universitate Riga, der Taras Schewtschenko Universität in Kiew, der Ivane Javakhishvili Universität in Tiflis, der Karls-Universität in Prag und der Eötvös-Loránd-Universität in Budapest auf. Auch der wissenschaftliche Austausch mit der Russisch-Armenischen Universität in Jerewan konnte, aufbauend auf den bereits 2014 und 2015 geknüpften Kontakten, erfolgreich wiederaufgenommen werden.

Im Jahr seines 25jährigen Bestehens blicken wir auf eine stetige Entwicklung, zuverlässig gestalteter Kooperationsbeziehungen mit osteuropäischen Partnerfakultäten zurück. In den Jahren nach seiner Gründung gab es einen starken Trend zur Kooperation von Ost und West. Desto mehr freut uns die diesjährige Bilanz, mit den zahlreichsten Beteiligungen von Kooperationspartnern seit dem Millennium. Das ist keine Selbstverständlichkeit, lebt das NOW doch hauptsächlich vom ehrenamtlichen unermüdlichen Einsatz der Beteiligten – von den teilnehmenden Studierenden, den studentischen Organisationsteams und den TutorInnen, die das Projekt maßgeblich mitgestalten, planen und durchführen. Nicht vergessen sollten wir aber auch den aktiven Einsatz der beiden Koordinatoren, Hannah Rainer und Michael Jahn, und der Mitarbeiterinnen der Stabstelle Internationalisierung der HU, die sich um Projektanträge, Sponsoring-Verträge, Administration und Einsatz der Projektmittel sowie um den Fluss der gesamten organisatorischen Abwicklung, den Kontakt der Teilprojektstäbe und TutorInnen untereinander und die Verbindung zu den Partnereinrichtungen kümmern. So wurde am 4. August das 25. Jubiläum in einem großen Kreis von Beteiligten, geladenen Gästen und Alumnus feierlich und zünftig gewürdigt.

Das Seminar in Prag, organisiert von Richard Großmann und Bela Abeln, erarbeitete unter der wissenschaftlichen Leitung von Rita Danz und Dominika Wojewska einen Rechtsvergleich zum Thema „Politischer Extremismus und Terrorismus – Sicherheits- und Freiheitsansprüche des Individuums im Angesicht des demokratischen Rechtsstaats“. In Prag standen darüber hinaus u.a. Besuche der Gruppe bei der Deutschen Botschaft, der deutschen Rechtsanwaltskanzlei Giese und Partner sowie bei einer Beratungsstelle für Opfer von Hasskriminalität auf dem Programm.

Dank der erfolgreichen Organisation durch Paulina Böse und Lauritz Stöber konnte mit den Partnern aus Budapest ein Seminar zum Oberthema „Law and Happiness“ auf die Beine gestellt werden, welches Christoph Winter und Michael Epping wissenschaftlich betreuten. In Budapest besichtigte die Gruppe das imposante Parlamentsgebäude und informierte sich über die Aufarbeitung der kommunistischen Vergangenheit in Ungarn.

Die erneute Zusammenarbeit mit der Russisch-Armenischen Universität in Jerewan wurde von den Studentinnen Kira Koethke und Charlotte Pinger als Alumnae des NOW organisiert. Mit Tanja Altunjan und Sandra Lukosek waren zudem fachkundige TutorInnen für ein Seminar zum Thema „The European Convention on Human Rights – Contemporary Issues“ gefunden. Als einziges englischsprachiges Teilprojekt machte diese Gruppe in der armenischen Hauptstadt u.a. Stippvisite beim Office of the Human Rights Defender.

Das Kiew-Seminar mit unseren PartnerInnen von der Taras-Schewtschenko-Universität, organisiert von Julius Bollongino und Karla Kurz, ging dieses Jahr unter der wissenschaftlichen Leitung von Martin Plohmann und Janina Barkholdt der Frage nach dem (heutigen) Wert des Völkerrechts nach. In Kiew hatte die Gruppe, neben Besuchen der Deutschen Botschaft und des Parlamentsgebäudes der Werchovna Rada, Gelegenheit zu einem Gespräch mit einer Justiziarin des Roten Kreuzes.

Die Verantwortung für das Riga-Seminar übernahmen währenddessen die studentischen Organisatoren Nils Hauser und David Malaheh. Die Seminargruppe arbeitete zum Thema „Soziale Gerechtigkeit durch (De-)Regulierung von Märkten?“, welches durch die TutorInnen Marie Garstecki und Florian Blaschko wissenschaftlich betreut wurde. In Riga besuchte die Gruppe das „KGB-Haus“, den lettischen Supreme Court sowie ein Kriegsmuseum, bevor in Berlin die „Topographie des Terrors“ und die obligatorische Besichtigung des Reichstagsgebäudes erfolgten.

Derweil führten Myriam Egouli und Vincent Falasca als studentisches Organisationsteam die Durchführung des Austauschs mit unseren PartnerInnen aus Georgien zum Erfolg. Sie ermöglichten ein Seminar zu internetrechtlichen Themen mit Studierenden der Ivane Javakhishvili Universität in Tiflis. Linda Kuschel und Jacob Haller verantworteten die wissenschaftliche Leitung der Gruppe, die in Tiflis den Präsidentenpalast und den Stadtrat besuchte und die Gelegenheit zum Gespräch mit einem georgischen Parlamentsabgeordneten nutzte.

Erneut konnten aus den Teilnehmerkreisen wiederum engagierte Studierende für die Weiterführung der Projekte 2018 in allen aktuellen Partnerstädten gewonnen werden. Ihnen wünsche ich zuversichtlich viel Erfolg beim Meistern der größeren und kleineren Herausforderungen, die eine solche Projektorganisation – von der Auswahl der Beteiligten bis zur Abrechnung der Projektmittel – mit sich bringt. Als Projektleiter möchte ich mich bei dieser Gelegenheit ausdrücklich bei den Verantwortlichen der Projekte 2017 für ihren Einsatz bedanken.

Nicht zuletzt möchte ich an dieser Stelle noch einmal hervorheben, dass unser begehrtes Austauschprojekt nicht ohne die wohlwollende und umfangreiche Unterstützung der Meyer-Struckmann-Stiftung und seit 2016 im Rahmen der CENTRAL-Partnerschaften der HU durch den Deutschen Akademischen Austauschdienstes (DAAD), der die Projekte in Budapest und Prag ermöglicht, zustande gekommen wäre.

Herzlichen Dank!

Martin Heger

Projektleiter



Sarah Rihane

Participants

Lecturers:

Sandra Lukosek
Tanja Altunjan
Aram Aramyan
John Hayrapetyan

Students:

Antonius Ahtner
Aura Kraus
Benedikt Jeutner
Julian Siefert
Laura Pilarski
Leska Küke
Linus Hagemann
Paulina Rundel
Pauline Höller

Anna Yakhshibekyan
Annahit Manvelyan
Armnie Chakhalyan
Diana Barseghyan
Liana Sahakyan
Mane Hakobyan
Marat Antonyan
Mika Petrosyan
Natalia Efimova
Ruslan Petrosyan

Organizers:

Charlotte Pinger
Kira Koethke
Veronika Petrosyan
Nare Galstyan

Daily Reports

Yerevan

| | |
|----------------------|----|
| Sunday 06.08.2017 | 8 |
| Monday 07.08.2017 | 11 |
| Tuesday 08.08.2017 | 16 |
| Wednesday 09.08.2017 | 18 |
| Thursday 10.08.2017 | 21 |
| Friday 11.08.2017 | 24 |
| Saturday 12.08.2017 | 27 |
| Sunday 13.08.2017 | 29 |

Berlin

| | |
|----------------------|----|
| Monday 14.08.2017 | 30 |
| Tuesday 15.08.2017 | 33 |
| Wednesday 16.08.2017 | 36 |
| Thursday 17.08.2017 | 39 |
| Friday 18.08.2017 | 41 |
| Saturday 19.08.2017 | 43 |
| Sunday 20.08.2017 | 44 |

Abstracts

1. “The Status of the European Convention on Human Rights and the Impact of Decisions by the ECtHR in Domestic Legal Systems – a German and Armenian Perspective” by Leska Küke - p. 45
2. “The Impact of Article 6 of the European Convention on Human Rights on Domestic Criminal Law: Contemporary Issues in German and Armenian Criminal Law” by Paulina Rundel - p. 47
3. “Peculiarity of Individual Applications to the ECtHR in the Context of Protracted Conflicts” by Pauline Höller - p. 49
4. “The Possibility of Derogations from the European Convention on Human Rights in Times of Emergency” by Julian Siefert - p. 50
5. “The Protection of Migrants and Refugees under the European Convention on Human Rights” by Linus Hagemann - p. 52
6. “Genocide Denial and Hate Speech in the Light of the Freedom of Expression, Art. 10 ECHR” by Benedikt Jeutner - p. 54
7. “Restriction of Human Rights under the European Convention on Human Rights in the Name of Public Morality” by Sarah Rihane - p. 56
8. “Cyber-Security under the European Convention on Human Rights – Privacy and Data Protection” by Aura Kraus - p. 58
9. “Implications of the Margin of Appreciation and the Principle of Subsidiarity” by Antonius A. Achtner - p. 60
10. “Disenfranchisement in the Light of the Right to Free Elections under the European Convention on Human Rights” by Laura Pilarski - 61



1

SUNDAY, AUGUST 6 2017

On Sunday morning we met at the airport SXF in Berlin to begin the exchange. We already had a chance to meet our group members, organizers and tutors, since the program had organized several events to get to know each other. One of these was the get together to celebrate the programs 25th anniversary.

The eight-hour flight to Yerevan included a short, three-hour stop over at the airport in Moscow. Al-



though we could not check in all together, some of us were sitting close or next to each other. This way, the flight was actually quite enjoyable.

In the evening, with two hours of time difference to Germany, we arrived safely in Zvartnots Airport, Yerevan. In the arrival hall, our Armenian tutors and organizers warmly welcomed us to Armenia. They had organized taxis to pick us up and bring us to the hostel. These taxi drivers would continue to drive us around for the following week, since going by taxis is fairly cheap in Armenia. Shortly after leaving the airport area we lost sight of the other taxis. It seemed like everyone took a different route into the city. We found

ourselves together again in front of the „Cascade Hotel“ instead of the „Cascade Hostel“. Luckily that mistake was quickly resolved by the drivers after shouting a few instructions back and forth, and then driving up the road in the other direction.

The hostel was nice and — as we realized in the next days — very close to the main



city. We quickly looked around, discovered there was a pool, figured out who was going to sleep in which bed, and planned our 'pool party', seeing as it was really hot in Yerevan. In the evening, the temperatures were still above 30 degrees Celsius. That is why some of us quickly changed and then we went to have some late dinner at a Kebab Restaurant in the neighborhood. A few of the Armenian participants joined us for dinner so that some of us already had a chance to meet our exchange partners. It was quite big deal to order: it required figuring out how many of what dish we needed and then have it translated to the waitress. Sounds simple but in a group of that size it is not that easy. Our organizers did

well but the vegetarian dishes were forgotten. The vegetarians had to wait a little longer but did not miss out on our first Armenian meal.

During the walk back to our hostel we had the possibility to use cash machines and an exchange office so we could withdraw or exchange Armenian drams.

After that we said goodbye to our Armenian friends until the next day. To round off the day, the rest of us sat together in the common room of the hostel until one after another got tired and went to bed.

- Leska Kūke





2

MONDAY, AUGUST 7 2017

At 8:45 am our first day in Yerevan started with a nice breakfast prepared by the hostel mum. We managed to fit everyone around the rather small table and enjoyed some bread with butter, jam, eggs and cheese. For some of us the night was more or less sleepless because of the heat. But we hoped to get used to that.

Our taxis brought us — of course on various routes — to the Russian - Armenian University (RAU), which hosted the third summer school exchange program in the scope of Network East-West. Our peers awaited us in the conference room, which we would use for our academic and research work this week. First of all, Ms. Suzanna Shamakhyan, Head of RAU Department of International Cooperation, and Mrs. Larisa Alaverdyan, director of the Institute of Law and Politics, had some welcoming and opening words for us. They highlighted that they are happy to host us and be part of the outstanding 25-year old program. Ms. Suzanna Shamakhyan also gave us a short introduction about the RAU. The university was founded in 1997. This is why the building was not empty during summer holi-



days, but busy with workers preparing for the celebrations of the 20th anniversary this September. Aside from the institutes of Law and Politics, it currently holds institutes of mathematics and high technology, economics and business, humanities and of media, and advertising and film production. RAU offers undergraduate, graduate and postgraduate programs with courses in Russian, Armenian and English. After graduating, the students receive both Armenian and Russian diplomas. Lastly, they wished us a great experience regarding the exchange and the cultural program.

Afterwards we had some time to introduce ourselves to our exchange partner. Every one of us had prepared welcoming presents from Germany and our peers returned the favor during the week with real Armenian presents.

Then our first excursion was scheduled before lunch: a visit to the Court of Cassation of the Republic of Armenia.

Two employees of the Judicial Department gave us a guided tour of the premises. We visited three court rooms, each of which was allocated to different kinds of cases. The first one is the room where the Council of Courts chairmen discuss various



current and administrative issues of judicial power. Moreover, the red court room is used for trials in civil, criminal and administrative cases. In the white room, only cases against judges take place.

The hallway between the very impressive Court rooms is decorated with the portraits of the former chairmen of the Court of Cassation.

Furthermore, the Armenian tutor John Hayrapetyan, who works full time as a senior assistant to a judge at the Court of Cassation, had organised a meeting with a Judge of the criminal chamber, Mr. Asatryan. The meeting took place in the library of the Court. Mr. Asatryan introduced us to the legal system in Armenia and answered all our remaining questions. The Court of Cassation — previously called Supreme Court — is the highest judicial instance of the Republic of Armenia in civil, criminal and administrative cases. The court therefore reviews the judicial acts of the Court of Appeal and the Administrative Court. It is not the competent authority for constitutional justice issues. To become a judge at the Court of Cassation, you have to serve a minimum of 10 years as a judge of a first instance court or 5 years as an appellate court judge.



After the visit, we headed back to the university to have lunch and then work on preparing our presentations for the remaining afternoon. Before dinner and a walking tour in Yerevan we had some free time at the hostel which we used to cool down during the well planned pool ‘party’.

On the way to the restaurant we passed by the opera building as well as the infamous

swan lake — maybe you have seen Kanye West swimming in here? We saw some street art paintings on the pavement and danced to traditional Armenian music above the underground mall. We also walked by the key to the heart of Yerevan on our way to the Republic Square. The Republic Square is the central town square in Yerevan and supposedly the lowest part of the city. The Government House, the History Museum and National Gallery, the Marriott Hotel and two other look alike buildings frame the square with the roundabout and the musical fountains. The latter we would get back to after dusk.



But first we had dinner at Yerevan Tavern. The table was already richly set with good food when we arrived. This is part of the Armenian way of dining, which also includes serving various courses, although the table – and our stomachs – were already full. We recognized some ‘cultural differences, such as using a lot more salt and other spices to season the food com-

pared to German cooks, and not having quite as many vegetarian options. The mealtime was always a great opportunity for conversations and exchanging experiences with our partners.

In the meantime, evening light had turned into night and the musical fountains were dancing and singing, while Republic Square was filled with a huge interested audience. We lingered for a moment or two as well to listen and watch. On the way back to the hostel we went to see the Cascades, which our Hostel was named after. The Cascade is a giant staircase with a park and multiple levels with fountains and sculptures. Besides being a tourist attraction, the site is also a meeting point for the citizens of Yerevan. We ended up going all the way up to the top of the stairs. I think no one regrets having this beautiful nightly view of Yerevan ending our first day of a great week to come.

- Leska Küke





3

TUESDAY, AUGUST 8 2017



On our second day in Armenia we learned a lot about its history. First we visited the Armenian Genocide Museum and Memorial. The Armenian memorial complex Tsitsernakaberd in Yerevan is dedicated to the victims of the Armenian Genocide which took place between 1914 and 1923. The Armenian Genocide was the extermination of approximately 1.5 million Armenians by the Ottoman government. Because the Armenian Genocide is the second most discussed case of genocide after the Holocaust, it was interesting to compare the two mass killings and to hear about the Armenian point of view.



The memorial is situated on one of the three biggest hills in Yerevan, which is the reason why we had an incredible view over the whole city and could see the big and the small Ararat mountains. When we arrived at the top, we walked through a garden of pine trees. Each tree was planted by a foreign dignitary, who visited the memorial to honor the victims.

Unfortunately, we couldn't find a tree planted by the German government, because Germany only recognized the Armenian Genocide last year. The memorial contains twelve slabs, which are positioned in a circle to represent the provinces which Armenia lost to Turkey. We then laid down red and white flowers around the eternal flame in the center and had a guided tour through the exhibition of the museum, which is built directly into the side of the hill.



After learning a lot about the tragic history of Armenia, we went to the Russian-Armenian University to get lunch. Full from all the food, we started with our group work by preparing

presentations about contemporary issues of the European Convention on Human Rights. After two hours of productive working and exchanging, we went to the Mesrop Mashtots Scientific Research Institute of Ancient Manuscripts, which is named after the inventor of the Armenian alphabet. There we could find one of the world's richest depositories of medieval books, including the biggest manuscript of Armenia, the Homilies of Mush, which weighs nearly 30kg and contains 603 pages, each page made out of one whole calf skin.

We then enjoyed a short break at the hostel before going to dinner at a movie themed restaurant, which turned out to be a great feast. We ate, laughed, filled our stomachs and although we ate as much as we could, there was still way too much food left over afterwards.



After dinner, our Armenian friends had the great idea to go on a spontaneous road trip at night to see the Garni temple, which is the last existing pagan temple in Armenia and therefore the best-known symbol of pre-Christian Armenia. While we were driving through the countryside, the roads got more and more rocky and bumpy, which made the trip seem even a little bit dangerous and adventurous. This was especially emphasized by the Armenian driving style, which definitely differs from the German one. When we arrived at the temple of Garni at nearly midnight, our Armenian friends had to persuade the guards to let us into the park, because it was already closed. After we successfully got in, the atmosphere was very magical. The full moon, surrounded by fog and clouds, gave us some light to look at the dark temple, which is situated at the edge of a cliff that overlooks the Azat River and the Gegham mountains. The mystical mood of the place and the surrounding river, hills and woods definitely made it an unforgettable memory.



- Paulina Rundel



4 WEDNESDAY, AUGUST 9 2017

Wednesday, the third day in Armenia, was the day of the first presentations. As an introduction to the topic of our seminar concerning the “European Convention on Human Rights - Contemporary Issues”, the first two presentations dealt with the more general, broader topics about the European Convention on Human Rights (ECHR). The main goal was to provide every participant with general knowledge about the Convention, its status and its impact on Armenian and German law. The first presentation dealt with general information about the jurisdiction of the European Court of Human Rights and the theories monism and dualism regarding the relation between international and national law.

After lunch, we heard the second presentation. My partner and I talked about the impact of Article 6 of the ECHR on domestic criminal law and its contemporary issues concerning the right to a fair trial. The right to reasonable time, presumption of innocence and entrapment were our main areas to focus on while discussing recent issues in Germany and Armenia. When debating the two topics it became clear that the ECHR can have a lot of influence on national law, although it does not have the highest possible status within.



protection of human, especially children's rights. Unfortunately, child labor is still quite common in Armenia and therefore the defender particularly tries to address children to take action as well. Because the Armenian Human Rights office is very progressive, effective and a role model for many institutions abroad, everyone was very impressed by their work.

To finish the day off in the same spectacular manner as always, we headed to the Ararat Brandy Factory. The Ararat brandy is one of Armenia's proudest achievements. We learned everything

After heated discussions we visited the Human Rights Defenders Office. The Human Rights Defender is an official, who deals with violations of human rights and fundamental freedoms by governmental institutions, while acting on behalf of the state. It was explained to us that this means, that he has "the key to everything", so that every door is open for him to seek justice, because every government agency has the criminal responsibility to allow the Human Rights Defender to enter, even without a warrant beforehand. Because the office is working together with more than 3000 NGOs, it can be seen as the intermediary between the state and the NGOs. The office gives free legal consultations, especially through its hotline and tries to raise awareness of its existence and the importance of the

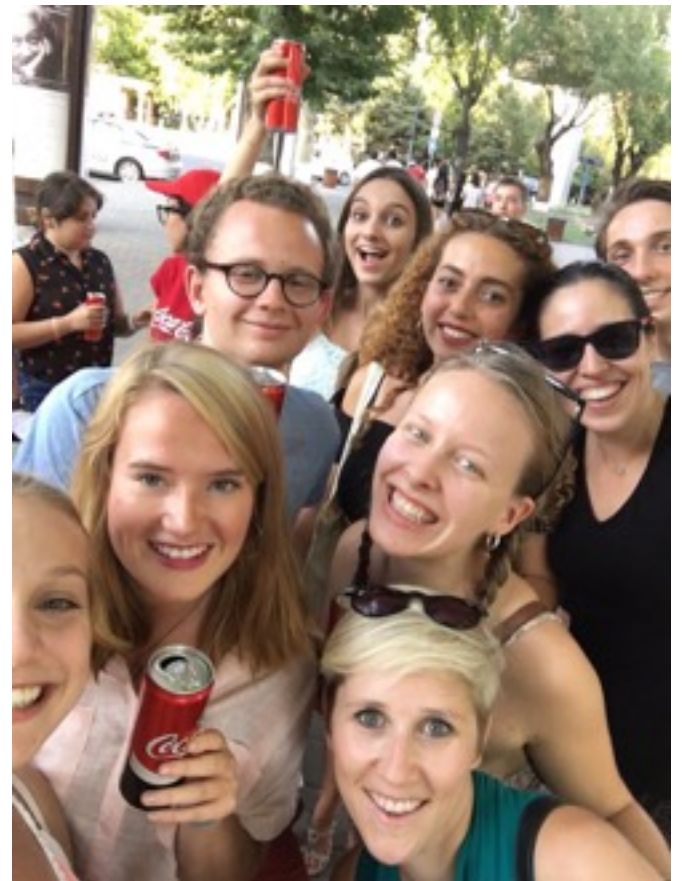
about the time-consuming production of brandy and that Winston Churchill often ordered brandy from the factory. The most striking item in the factory, despite the very old brandies, was the peace barrel, which will only be opened when the conflict between Azerbaijan and Armenia

After heated discussions we visited the Human Rights Defenders Office. The Human Rights Defender is an official, who deals with violations of human rights and fundamental freedoms by governmental institutions, while acting on behalf of the state. It was explained to us that this means, that he has "the key to everything", so that every door is open for him to seek justice, because every government agency has the criminal responsibility to allow the Human Rights Defender to enter, even without a warrant beforehand. Because the office is working together with more than 3000 NGOs, it can be seen as the intermediary between the state and the NGOs. The office gives free legal consultations, especially through its hotline and tries to raise awareness of its existence and the importance of the



about Nagorno-Karabakh is settled peacefully. At the end of the tour through the factory we got the chance to taste a three and a ten years old brandy. The opinions about the taste were rather diverse and after we more or less satisfied our thirst, we had dinner at a fast food restaurant and got some free time to explore the city. When we finally arrived back at our hostel, we were socializing together, sharing stories and recalling all the exciting events of the day, especially the presentations and discussions about the difficulty to protect human rights worldwide and effective solutions, including the ECHR and the Human Rights Defender Office.

- Paulina Rundel





ՀԱՅԿԱՆԻ ԲՆԱՆՈՒ
ՄԱՍԻ ԵՎ ՊԱՌԻՍՄԱՆ
ՍՊՈՐՏ ԳՐԱՆՆԱԿԱՆ
ԳՐԱԳՐԱՆԻ ԳՐՈՒՄ ԼՈՒՐԵՆՏԻ
ՍԵՐՈՒՄԻ ԲՈՒՐՈՒՄԷՏ ԳՈՂՈՒՄԻ
ՄԱՍԻ ԵՎ ՆԱԿԵՂՆԵՆՏԻՆԻՑ ԵՎ
ՍՏԻՍԵՆՆԵՆ ԳՐԱՐԻ ՏՆԵՎ 1894

5

THURSDAY, AUGUST 10 2017



On Thursday we visited some famous churches in Armenia. One of them was Etchmiadzin Cathedral, which is considered to be one of the oldest cathedrals in the world. It was striking how lavish the decoration inside the church was. While we in Germany are rather used to simple paintings and stained-glass windows, the church had paintings in vivid colors and embellished furniture everywhere. Also, the people visiting the church not as tourists, but as believers were far more devoted than we were used to, giving the church quite the somber atmosphere and giving us time to think and process our time in Armenia on yet another level.

It is true, that the Armenians take quite a lot of pride in the fact that they were one of the first solely christian countries in the world, and that they remain apostolic christians in an area that is predominantly Orthodox or Muslim. The Cathedral is the mother church for the Armenia Apos-

tolic church and we were honored, to be taken there as guests.

Furthermore, it was visible, how much maintenance was needed to preserve not only the church, but also the outside gardens and their lavish vegetation. Despite the hot climate, all the flowers were in bloom and there were apples



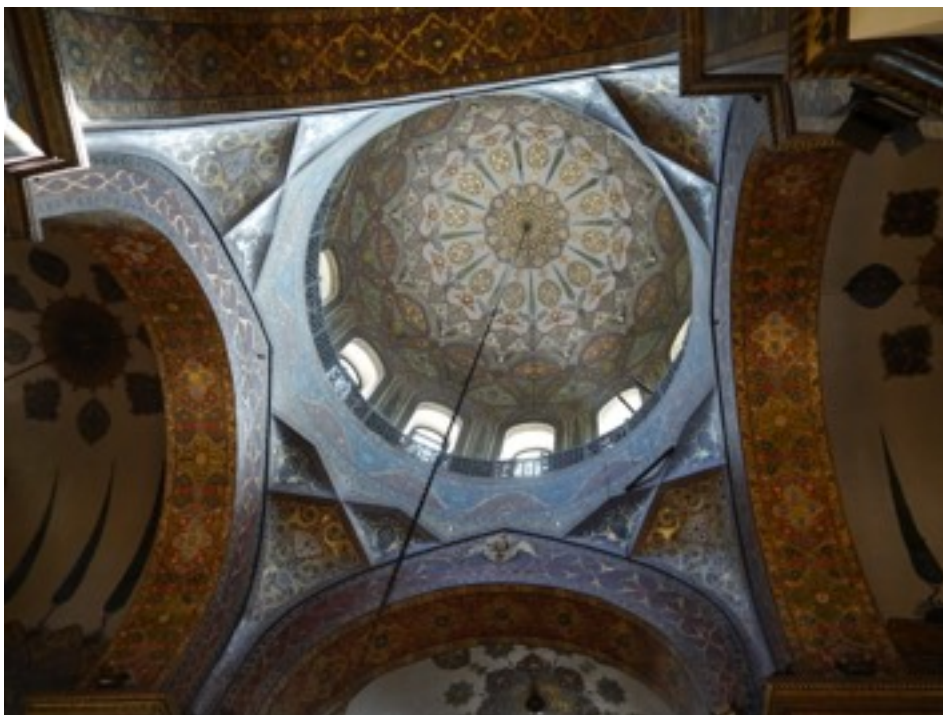


growing on the trees. It was the perfect location to take some candid holiday pictures to send back home.

After the visit to the churches we went back to the University for lunch and to listen to Julian and Dianas presentation. As a special guest, the ombudsman of the Nagorno-Karabakh region came to the university and held a presentation on the current situation there.

In the evening we put on our best clothes and took our taxis to Yerevans rooftop bar: "El Sky Bar". There we ate an exquisite dinner overlooking the city center while it was all lit up. It was truly breathtaking. After finishing our meal we danced, sang and had a wonderful evening.

- Pauline Höller





6
FRIDAY, AUGUST 11 2017



The last day of our official program in Yerevan started with a visit to the Sergei Paradjanov Museum. The famous film director Sergei Paradjanov was born in 1924 in Tbilisi, Georgia and adopted a confrontational course towards the Soviet authorities with his own cinematic style that broke with the guiding principles of socialist realism and left its mark in Ukrainian, Georgian and Armenian cinema. Together with his controversial lifestyle and behaviour, this led to his persecution and imprisonment and to the censorship and suppression of his films in the USSR. In the Sergei Paradjanov Museum in Yerevan, where the artist died in 1990, we could see parts of his films, such as “The Colour of Pomegranates”, but also various artworks he created while in prison, e.g. installations, collages, drawings, assemblages and dolls.



After lunch in the canteen of the Russian-Armenian University, our last item on the agenda of the academic program in Yerevan was the programme closing. Suzanna Shamakhyan, Head of Department of International Cooperation of the Russian-Armenian University, found some kind and warm words to emphasize the importance of the Netzwerk Ost-West for both universities and wished us a further successful week in Berlin.



In the afternoon, we had free time that was used by some of us to climb up the entire Yerevan Cascade to visit the Mother Armenia statue in the Haghtanak (Victory) Park overlooking the whole city of Yerevan. The statue with a height of 22 meters (with pedestal 51 meters) symbolises peace through strength and keeps watch over the city since 1967, when it replaced a monumental statue of Joseph Stalin that had been created as a victory memorial for World War II.



For dinner, we went to the “Old Erivan” where we had a beautiful view over the city. As the karaoke machine was out of order – for some of us a big disappointment, for others a great relief – we only stayed for two hours to dance and then went on to the Yerevan Cascades to sit down and enjoy the view of Yerevan by night.

- Julian Siefert





7 SATURDAY, AUGUST 12 2017

On Saturday, we got up pretty early (again) to meet some of our Armenian participants in front of the Constitutional Court – from there we all took a bus that would take us the Noravanq Churches.

The bus ride took a little longer than expected, but neither that nor the extraordinary hot weather could harm our group spirit and the overall mood.

After about two hours (due to a slight detour) we arrived at the Noravanq Churches that lay circa 120 kilometres away from Yerevan at the side of a mountain. Almost looking like an old village, there are two churches, a chapel and a graveyard that also hosts typical Armenian crossstones (khackars). Noravanq was built in the thirteenth century and later became a major religious and cultural center, as well as the residence of



the Orbelian (a noble family of Armenia) prince.

All the buildings in Noravanq have a quite interesting architecture, most notably the Surb Astvatsitsin church that thrones the centre of the complex. It has two stages with a large dome on top, where the upper floor can only be entered by climbing up small (as in really small) and steep steps.

Because of its position at a slope we also had a beautiful view over the surrounding valley that we used to take (some more) group pictures.

On our way back home, our bus made a stop at a beautiful restaurant that belonged to Veronicas parent where we were warmly welcomed and from which we departed well strengthened after a great lunch.

Back at our hostel we had some free time that most of used to do some shopping or just to slender around the city for the last time.

Our last evening was then well spent with a picnic at the cascades, a beautiful view over the nightly city and vivid discussions about the last week (it definitely seemed too short) and our joint week to come.

- Linus Hagemann



SUNDAY, AUGUST 13 2017

Although slightly exhausted and with a bit of pleasant anticipation to sleep in our own beds again, we were all quite sad when we got in our taxis towards the airport on Sunday morning.

Besides some waiting time and surprisingly stressed atmosphere at the passport control back in Berlin (welcome home), our trip was pleasantly uneventful and we used the evening to get some rest before our start in another exciting week...

- Linus Hagemann





9

MONDAY, AUGUST 14 2017

The Berlin program started on a sunny Monday morning with a welcoming speech by our German organisers Charlotte and Kira. Not much time was lost and the first of two presentations heard that day started. A contemporary and controversial issue was presented by Linus and Mane. It was called "The protection of migrants and refugees under ECHR". The most important Articles concerned are Article 5 and 3 of the ECHR. It concluded with the question of whether the ECHR is a



consensus. Most controversial was the comparison between Germany and Armenia on the topic of same sex marriage. A study presented to us showed 98% of Armenians are against same sex couples whereas in Germany only 10% oppose homosexuality. The discussion was really interesting and showed

friend or foe of migrants. On the one hand the ECHR does not grant a right to asylum and could therefore be regarded as a foe but on the other hand migrants do enjoy the general protection of the ECHR. Additionally, the Court decided on many cases setting a standard for treating immigrants.

for example that Article 35 in the Armenian Constitution differs in Armenian and its English translation on this point. Connected with that discussion was the question about cultural relativism and universal human rights. The conversations merged to the final

An issue we had already discussed in a previous presentation was now a topic of its own. The second presentation on that day about the “margin of appreciation and the principle of subsidiarity” was given by Antonius and Natalia. They talked about the margin as a combination of proportionality and subsidiarity. An interesting aspect was the connection of these principles with the question of burqa bans and the question of European



question if the margin of appreciation in general benefits or threatens the Convention. Margin of appreciation could dilute the granted rights, yet it may be a precondition why countries joined the Convention in the first place and stay under its jurisdiction.

After the presentations, we went to the Mensa. Fascinating conversations about the influence of Russia on the Armenian society followed, torn between the European Union and Russia. Afterwards we walked to the Talking Walls exhibition and discovered nice places on our way such as the Museum Island. In the exhibition, most acknowledged was a graffiti from Yerevan about the group Sasna Tsrer. The troop stormed a police station to protest against the political system. The graffiti is called 'Patriots'.

Later we went to the beautiful district Prenzlauerberg and visited the Kulturbrauerei, one of the



very rare well-preserved examples of industrial architecture in Berlin. We moved on to the Mauerpark. The name (translated to "Wall Park") commemorates the history of that area being a former part of the Berlin Wall and its Death Strip.

In the evening, we went to an Asian restaurant. The food we ate had the amount of the food we were used to in Yerevan. But contrary to the experience we had in Armenia there was an equal share of vegetarian or vegan and non-vegan food. To digest the meal, we went for a walk to the Invaliden Graveyard where Kira explained the history of this historic place. The day was rounded in a gastronomy where we learned the habit of Armenian wishes before you drink.

- Benedikt Jeutner





10

TUESDAY, AUGUST 15 2017

On the second day in Berlin the Opening Ceremony of Network-East-West awaited us in the Faculty of Law of the Humboldt University. Even though it was rather short, it consisted of several welcoming speeches and a celebration of the 25th anniversary of the Network-East-West program! Hopefully will continue existing for an even longer time.

The rest of the morning was not as busy since everybody had expected the opening ceremony to last longer. Nevertheless, we were quite thankful for some free time since we were all feeling a bit tired. While the Germans enjoyed a cup of coffee in the sun and relaxed, the Armenians jogged to do some shopping, especially buying all kinds of gifts for their family and friends.

We all could not enjoy our free time all too long, since we had the very interesting but also exciting visit to the German parliament (Bundestag) ahead of us. At 3.30 pm we all gathered in front of the Bundestag. The Germans, as usual, were overly punctual. In contrast, most Armenian participants came running in a hurry to the meeting point, as they almost lost track of time on their shopping

spreed. Nevertheless, everybody managed to participate to the guided tour. The German participants were almost as excited as the Armenians to enter the Bundestag, because everybody knows that the lines to get in are usually quite long and booking a tour can be difficult. Our guide was very nice, and led us through the enormous building, showing us the praying room for the delegates and gifts that Armenians had given the Bundestag. Also very special was the writing on the walls of the halls of the Bundestag, that had been written by soldiers of the Soviet Union after World War Two. The writing also included the names of Armenian soldiers and the Armenian participants tried to search for names of their ancestors, as well as sentences they would understand. While most of the writing was in Russian, some Armenian participants managed to find Armenian words. It must have been

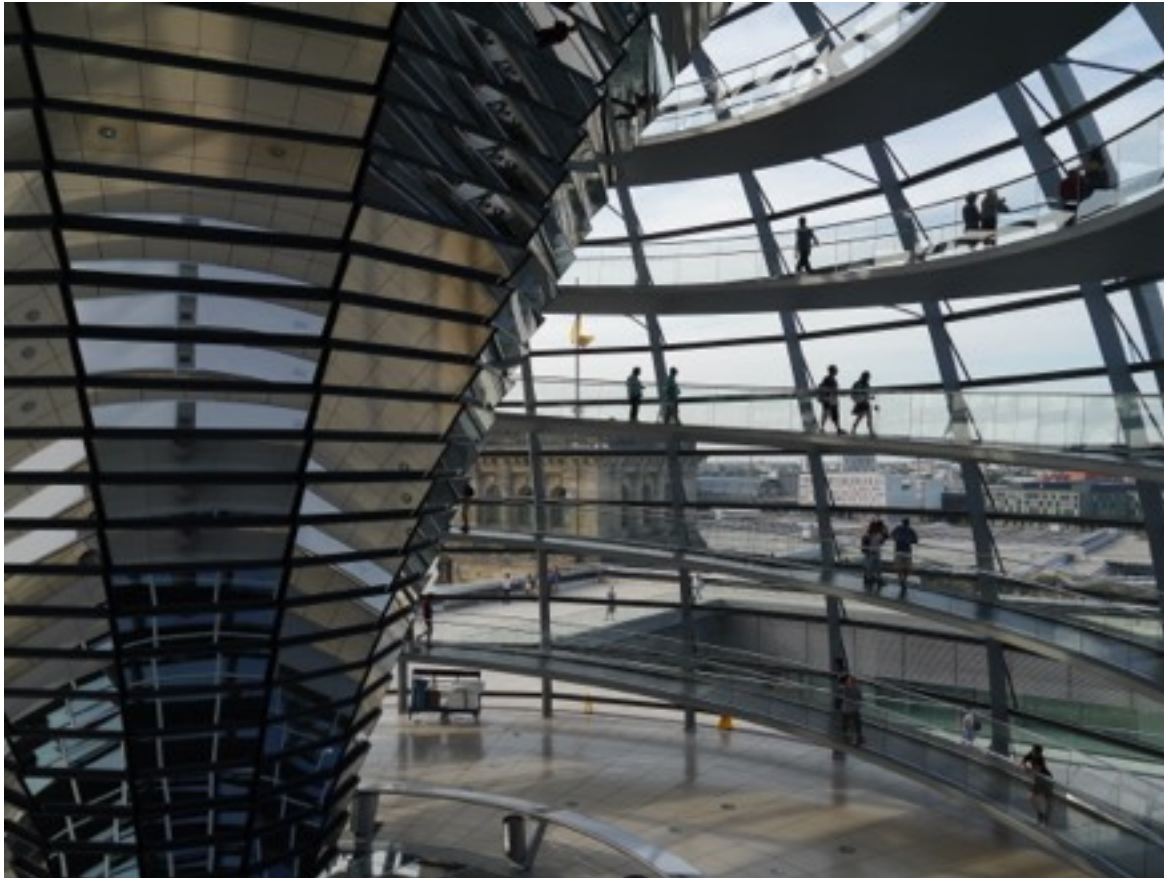


a beautiful moment for the Soviet soldiers when they entered the halls of the Bundestag celebrating their victory and it also was one for most of the Armenian participants, seeing the writing of relatives that back then had to go through the horrible time of war on the walls of a building that far away from home. After the guided tour, we had some free time in the Bundestag and went to

the rooftop to see the view and to go up the glass roof. We were very lucky as rays of sunlight greeted us with warmth and a beautiful view over Berlin.

Slowly we felt the hunger coming and so we headed towards Neukölln to eat dinner in the Knödelwirtschaft. As the name already reveals, it was time for the Armenians and even some German participants to try the traditional food from Bavaria,





Knödel! While most really enjoyed the food, there were some who weren't too excited about the taste of a soft potato or breadcrumb ball. They grabbed some snacks on the way, because it was already time for nightlife, as the sun was about to set.

We walked to the rooftop bar Klunkerkranich and were all surprised to see a huge line of people in the front, waiting to get in. After a short discussion we decided to stand in line since the view and location should not be missed on a trip to Berlin. The

line luckily moved faster than we expected and in a huge group consisting of over twenty people we entered the rooftop bar, just in time to see the sunset. As we were so many people, everybody split up into smaller groups to find a place to sit. Many ended up having to sit on the floor, but because everybody was tired from walking around all day, nobody minded. After lengthy conversations, the jazz music in the background becoming quieter, and the darkness crawling in over Berlin's clear skies, the long day slowly came to an end.

- Aura Kraus





11

**WEDNESDAY, AUGUST 16
2017**



The day began with the presentation on the “Restrictions of Human Rights under the European Convention on Human Rights in the name of Public Morality”, which Liana and I presented. The next presentation we listened to was closely linked to the issue of morality: “Genocide Denial and Hate Speech in the Light of the Freedom of Expression, Art. 10 ECHR” by Anahit and Benedikt. After fruitful discussions and interesting debate on the issue it was time for lunch, so we all head to the Humboldt University cafeteria to enjoy some food.



Once everyone finished eating, we strolled down Unter den Linden. Since Germany and Armenia both have experienced the horrors of a genocide, the destination was the Holocaust memorial, located right in the heart of Berlin next to the Brandenburg Gate. Walking through the tall, seemingly endless, stone pillars really made us reflect on the past and how it affects our lives today.



On a brighter note, we wandered through the adjacent Tiergarten, enjoying the sound of chirping birds and seeing the sunlight stream down through the leaves. We walked all the way to the Hauptbahnhof, where we climbed aboard a tour boat which would then take us on a sightseeing trip through the center of Berlin. We cruised on the Spree river and passed the Bundestag, several other government buildings, the Museumsinsel, and ended up by the Berliner Dom. It was a fabulous opportunity to see Berlin from a different perspective.

After the boat adventure, everyone had some free time to go shopping or just relax before the evening plans. This night there was a charming picnic in the Law Faculty of the university, where

all the participants of this year's Netzwerk Ost-West (NOW) project came together to eat, drink, and exchange impressions. There was a lot of laughter and positive vibes, so the day ended with smiles and motivation for the following day.

- Sarah Rihane





12

THURSDAY, AUGUST 17 2017

Thursday was all about history. We met early to get our train to Potsdam. In Potsdam, we first visited the Neues Palais, an impressive 18th century Castle with a façade resembling the Buckingham Palace, featuring a freshly restored Rococo-interior. Frederic the Second, King of Prussia, had built the palace to demonstrate his newly won strength after having conquered Silesia, a region in today's Poland. This intention is best illustrated by the lavish use of Silesian marble throughout the entire building that served as a guest house. The ensemble also includes two perfectly symmetrical buildings in Neoclassical style at the opposite of the Palace's front – we were very surprised to learn that they had only been set up to accommodate the kitchen and the servant's rooms! The Neues Palais is situated in the westernmost part of Sanssouci park.



After lunch in the canteen of Potsdam University, we took a walk through the huge area. It had been constructed by Frederick the Second as a refuge from the restlessness of Berlin life and also contains (among other, smaller buildings) the world-famous Sanssouci castle. Once we arrived there, our free time in Potsdam started. We used it for strolling through the picturesque streets of the city and taking plenty of photos.



In Berlin again, this free time continued; some used it to unwind after the exhausting past days, others went shopping or visited the Berlin Dome. The day ended with an impressive load of currywurst and chips. Bon appetit!



- Antonius A. Aichtner



13

FRIDAY, AUGUST 18 2017

On Friday, the two last presentations took place. Anahit and Benedikt were the first to take the floor, speaking about “Genocide Denial and Hate Speech in the Light of the Freedom of Expression, Art. 10 ECHR”. Contrasting the liberal, anglo-saxon and the more restrictive, continental approach to the freedom of expression, the speakers presented among other ECtHR the case of *Perincek v. Switzerland*, the decision about a Turkish politician who, on several occasions, had denied the Armenian genocide, and whose conviction by the Swiss Courts was declared unconventional.

The second group, Armine and Laura, presented their work about the possibility of disenfranchisement under the ECHR – the loss of the right to vote and to be elected. Two groups of people are most commonly affected by it: mentally disabled persons and prisoners. While the disenfranchisement of the former is commonly justified by their lesser ability to follow the democratic process and the well-grounded fear that their supervisors abuse their votes, the justification of denying the democratic rights to prisoners is more contentious. This was confirmed in the vivid discussion following the pres-



entation. Was the loss of those rights to be regarded as a part of the sentence or should prisoners be excluded from the voting process because they had demonstrated their irresponsibility? Should their disenfranchisement only last during their imprisonment or should they lose the right to be elected for their whole lifetime? Such questions came up.

After this long session, we still had not de-

served lunch. First, we went to the Kammergericht, the Berlin Court of Appeals. Not only did we learn about the German judicial system, we also dove deep into recent German history: we visited the room where the Nazis held their political trials and watched a short movie with frightening footage of their hearings. Before it became a courthouse again, the allied occupation forces used the impressive building for their aviation office – the sometimes unexpected traces they left are still visible today.

For lunch, we enjoyed a traditional Berlin kebab. In the afternoon, we had free time that was mainly used for discovering and rediscovering the shops around Friedrichstraße. After such a long day, it was good that the cultural activity in the evening involved food, and a lot of food it was: we had dinner at Hofbräuhaus which provided us with the energy we needed to show off our Zumba-skills, leaving the public flabbergasted.

- Antonius A. Achtner



14

SATURDAY, AUGUST 19 2017



Since the presentations were finished on Friday, our last day together in Berlin was rather relaxed. The program on Saturday only started at 2 pm. Many of us used the free time to sleep in, but some of our Armenian partners took this last opportunity to do some shopping in Berlin. We met in a sweet little restaurant in the Bergmannkiez for some typical German lunch – potato and lentil soup. Little by little, everybody arrived.

After lunch, we hit the road to get to the next destination on our agenda: the museum “Topographie des Terrors” close to

Checkpoint Charlie and right next to the Berlin Wall. The large area surrounding the exhibition building is now blank, but up until 1945 it used to be home to the headquarters of the Nazi regime. Our group was separated into two, each having a guided tour. In our group, we learned about the persecution of minorities during the holocaust.

Afterwards, we took the bus and the subway to get to the Paul-Lincke-Ufer in Neukölln where we had the most delicious pizza for dinner in a lovely little Italian restaurant. We spent some more time gathered cozily together before we went off to Schöneberg for the crowning glory of our day and our whole journey: the “Green Mango Karaoke Bar”. When we arrived, the place was already crowded, mostly by bachelorette parties and the mood was cheerful. We danced, sang along and had a good time. We were sad to say goodbye to our Armenian friends after spending every day together for two weeks but we really had a blast that last night.



- Laura Pilarski

15

SUNDAY, AUGUST 20 2017

On Sunday morning, the Armenian group was brought to Tegel airport by taxis at 7 am because their flight was at 11 am. Everybody got home to Yerevan safely and we still could not believe how fast those two eventful weeks went by.

- Laura Pilarski



THE STATUS OF THE ECHR AND THE IMPACT OF DECISIONS BY THE ECtHR IN DOMESTIC LEGAL SYSTEMS – A GERMAN AND ARMENIAN PERSPECTIVE

LESKA KÜKE

The European Convention for the Protection of Human Rights and Fundamental Freedoms, shortly European Convention on Human Rights (ECHR) is an international treaty between the member states of the Council of Europe.

Most important – and exclusive – indicator of the status of the ECHR can be found in the Convention itself in Article 1 ECHR. This Article states the obligation to respect the (following) human rights and by that defines the scope of the Convention. In order to secure the substantive rights of the Convention it is a duty of the member states to give effect to the Convention. However, they are not obliged to adopt a particular method of ensuring the observance of the Convention rights.

A general possibility by which effect is given to an international treaty in the national legal system is incorporation. There are two contrasting theories regarding the relation between international and domestic law under constitutional law: dualistic and monistic view. Monism is based on the understanding of one all-embracing international and national legal system. The rules of international law have priority and, therefore, must be applied by national courts. On the contrary, the dualistic theory distinguishes between international and national law as two separated legal spheres. Therefore, an act of transformation is needed to give effect to the international law in the national legal system. The procedure of transformation is constituted by the national law as well as the following status of the international law.

In Germany in accordance with Article 59 of the Basic Law of the Federal Republic of Germany a federal law ('Zustimmungsgesetz') an act of transformation is necessary to incorporate an international treaty. This process *inter alia* justifies that the German legal system is based on the dualistic view. The incorporated law has the same rank as every other law passed by parliament. The ECHR is such an international treaty and was also incorporated in Germany in the rank of a federal law. However, the principle of commitment to international law (Article 25 Basic Law) requires the interpretation of the Basic Law in line with the ECHR. As a result the international law does not find itself a status above the Constitution (material status) but takes effect within the constitution (formal status).

Armenia, however, has a monist system. The incorporation process contains votes of the parliament and the Constitutional Court. An act of transformation is not needed. Due to the system being of monistic character the ECHR has priority over the national Armenian law.

The decisions of the ECtHR have an important role regarding the scope of the Convention as they interpret the Convention's content. The states are committed under Article 46 ECHR to follow the final judgments of the ECtHR in any case to which they are parties. However, it is considered that decisions of the Court have guiding influence ('Orientierungswirkung'). In the Armenian legal practice, all judgments of the ECtHR set a legal precedent beyond the subject-matter and parties of the jurisdiction. The interpretation of the German Basic Law in line with the Convention requires consideration of the decisions of the ECtHR. Based on the binding force of statute and law the Courts in Germany are at all events under a duty to take a judgment of the ECtHR that relates to their case into account (beyond the subject-matter and parties of the jurisdiction). In conclusion, the ECHR has a different status within the German and Armenian legal system but the decisions of the ECtHR have a great impact in both domestic legal systems.

THE IMPACT OF ARTICLE 6 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ON DOMESTIC CRIMINAL LAW - CONTEMPORARY ISSUES IN GERMAN CRIMINAL LAW -

PAULINA RUNDEL

The right to a fair trial, which is provided in Article 6 of the European Convention on Human Rights (ECHR), is fundamental to the rule of law and democracy. It is one of the most controversial Articles with the most violations before the European Court of Human Rights (ECtHR) in Strasbourg. Latest statistics state that 60% of the cases regarding Germany before the ECtHR dealt with Art. 6, which shows the importance of protecting the right to a fair trial and preventing further violations. Article 6 protects not only the right to a court or tribunal with unbiased judges and sufficient remedy, but among others also the right to silence, the privilege against self-incrimination, the presumption of innocence and the right to be advised, defended and represented. Although the right to a fair trial is not formally standardised in German constitutional law, it is considered as implied within the right to liberty and the rule of law.

Due to frequent violations, the right to a fair trial within reasonable time is one of the most contemporary issues in German law. Because there is no direct definition of a reasonable amount of time, the assessment has to be constructed on a case-by-case basis. In the case *Rumpf v. Germany* from 2010 the Court held that the overlong proceedings in Germany presented a structural and recurring problem. As a consequence the Court demanded that Germany had to introduce an effective domestic remedy against excessively long court proceedings within one year after the judgment. Germany subsequently introduced a new statute in 2011 and increased supervision regarding the length of proceedings. This specifically illustrates the strong influence that the ECHR can have on German law.

Highly discussed in today's German criminal law is also the issue of entrapment by "agent provocateurs". Entrapment, also called police incitement, is defined by the ECtHR as a situation in which a suspect is pressured by officers into committing a crime they would not have committed otherwise with the purpose to establish an offence, provide evidence and institute a prosecution. In a judgment of 1984, the Federal Court did not accept a procedural impediment in a case of entrapment, but applied a reduced sentence. This approach was recently overturned by the Federal Court in 2015, stat-

ing that entrapment should regularly result in a procedural impediment. The influential foundation for this decision was the judgment of *Furcht v. Germany* by the ECtHR from 2014. In this judgment the ECtHR explicitly decided for the first time, that prohibited governmental entrapment cannot be compensated properly by merely granting mitigation of punishment. Therefore the usually implemented practice of reducing a sentence was no longer applicable and the German courts are now consulting the principles laid down in the ECtHR decision as guidelines. This statement is one of the key examples on how the ECHR is taken into consideration in the German legal system.

Comparing Germany and Armenia it should be noted that the 2015 amendments to the Armenia constitution implemented the guarantees laid down in Art. 6 in great detail. This means, that the principle of a fair trial is more directly incorporated and protected in the Armenian than in the German constitution. Moreover, Armenia aims to secure the protection of the right in daily practice. For example, the Human Rights Defender, an independent institution acting on behalf of the state and dealing with human rights violations by governmental bodies, established programs on protecting and ensuring the right to a fair trial in Armenia. Although Germany has more violations before the ECtHR, Armenia strives to prevent further violations of Art. 6 by supervising criminal proceedings through different institutions, i.e. the “Special Investigation Service” and the “Academy of Justice” to improve the skills of judges, prosecutors and investigators. Therefore Germany should also put more effort into the protection of the most indispensable right in criminal law.

In the end Art. 6 entails a variety of principles, which are essential to guarantee a fair justice system, which treats state and citizens equally. Article 6 plays a substantial role in the domestic legal systems of the member states, especially in regards of contemporary issues, by guiding them to a more internationalised, unified, humanitarian and most importantly fairer jurisdiction.

PECULIARITY OF INDIVIDUAL APPLICATIONS TO THE ECtHR IN THE CONTEXT OF PROTRACTED CONFLICTS

PAULINE HÖLLER

Modern warfare and close international cooperation have brought new topics concerning the jurisdiction of High Contracting Parties and extraterritorial acts in front of the ECtHR. What is the right approach for the Court towards violations of human rights that did not occur on the territory it is supposed to protect? And how does one deal with the requirement of exhaustion of domestic remedies in times of conflict, when the jurisdictional system of one country is far from working properly?

Since the ECtHR is usually only judging in territorial matters of the High Contracting parties, the question of extraterritorial was only discussed in the light of events involving interference of Governments on the soil of Countries that have not ratified the ECHR. The ECHR offers some ways of establishing jurisdictional links between the Court and extraterritorial acts, mainly through state agent authority. If one party could exercise somewhat of the power normally to be exercised by the government, it is still bound to protect the people and therefore can be held responsible in front of the ECtHR. Also, through effective, overall control the High Contracting Party can have jurisdiction over another area. This criterion is measured in the numbers of military personnel on the Ground.

The Court's approach towards extraterritorial acts in older cases, where it quickly denied jurisdiction, was harshly criticized by some observers. In their eyes the main problem was that if there was no jurisdictional link, one state could behave in another state in a way that would not be acceptable on its home territory. The discussion is related to topics such as state responsibility and ethical warfare. Therefore it is now common practice for the Court to rather assume jurisdiction, in order to focus more on the merits of one case. As for the exhaustion of domestic remedies, the Court also established some new case law. It abandoned the simple rule to just deem this requirement unnecessary in cases where there is no promise of redress concerning domestic remedies. Additionally, the Court changed its approach towards remedies that were introduced after conflicts; Applicants are asked to also exhaust those remedies that were specifically adopted to right those wrongs which occurred in times of conflict. New remedies need to be tested and improved to find a way back to a normal and functioning legal system.

The topic of jurisdiction, exhaustion of domestic remedies and extraterritorial acts demonstrates how closely related law and morals can be in the terms of responsibility, how law may stand in the path of justice for those who have been wronged in terms of conduction of evidence and how protracted conflicts cause great humanitarian suffering for the people. The legal framework and the ECtHR's case law must keep up with the changes in our society and international affairs.

THE POSSIBILITY OF DEROGATIONS FROM THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN TIMES OF EMERGENCY

JULIAN SIEFERT

“If human rights get in the way of doing these things, we will change those laws to make sure we can do them.” Expressing her willingness to take extremely severe measures against terrorism at the expense of human rights, the British Prime Minister Theresa May pronounced this noteworthy sentence three days after the terrible London Bridge terrorist attack and just a few days before the general election in the United Kingdom in June 2017. This statement reflects, inter alia, the tension between the individual right to the implementation of human rights and the right of the state to self-preservation corresponding with its duty to protect its citizens. The idea of conceding an exceptional right to the executive power in exceptional situations in order to resolve this tension is not new; it goes back to the ancient Romans who appointed a dictator for a fixed time in case of a state of emergency and finds expression in the well-known phrase “*Necessitas legem non habet*”.

The European Convention on Human Rights contains a derogation clause in its Article 15 permitting the state parties to derogate from their obligations under certain conditions. In November 2015, the French authorities have informed the Secretary General of the Council of Europe about a number of state emergency measures taken after the terrorist attacks in Paris possibly involving derogations from certain rights guaranteed by the Convention. In view of the fact that, due to six extensions, this state of emergency will be applied without any interruption until 1 November 2017, and considering Turkey's notification of its derogation from the ECHR in July 2016, one should ask whether the Convention is able to ensure an effective implementation of human rights nowadays in times of terrorism as one of the great threats to our democratic society.

The examination of Article 15 ECHR shows that this derogation clause contains a clear and restricted criterion of threshold for any state party to derogate from its obligations under the Convention only in time of war or other public emergency threatening the life of the nation. According to the norm, there is also a narrow criterion of necessity implying that the measures taken need to be limited to the extent strictly required by the exigencies of the situation and shall not be inconsistent with other obligations under international law. Furthermore, there is a catalogue of non-derogable rights creating an “emergency-proof minimum” as well as a requirement of notification at the beginning and in the end of any derogation.

In the light of the clear wording of Article 15 ECHR, one has the impression that it is suited to strike a reasonable balance between fundamental rights and freedoms and the guarantee of collective safety. However, when it comes to the application of Article 15 ECHR, this impression is destroyed by the insight that the clear and restricted conditions for a derogation contained in the Convention are watered down by the margin of appreciation doctrine employed by the European Court of Human Rights where its supervision is most needed. Surely, there are good reasons for conceding a certain margin of appreciation to the state parties but it needs to be limited more strictly in order to ensure that the Convention's guarantees are not undermined.

Consequently, the answer to the question whether the ECHR is able to ensure an effective implementation of human rights nowadays in times of terrorism is that the legal framework regarding derogations is sufficient, but that its application must be strictly monitored, which is unfortunately not the case at the moment.

THE PROTECTION OF MIGRANTS AND REFUGEES UNDER THE ECHR

LINUS HAGEMANN

In Germany, since autumn 2015, if not earlier, the ‘European Migration Crisis’ has been a vivid topic for political debate and for society. But the still ongoing stream of arrivals of many migrants at the borders of Europe has put even more pressure on countries at the Mediterranean or at the eastern border of Europe. The extreme situation has led to structural failures in some states. All over Europe the question which rights and protection migrants should enjoy became highly relevant.

Here the European Convention on Human Rights (ECHR) comes into play, because the rights granted by it completely apply to migrants which are under the jurisdiction of a member state, without consideration of their residence status. However, the ECHR does not entail a specific right to asylum and almost no special provisions for the protection of migrants. Therefore, the jurisdiction of the European Court of Human Rights (ECtHR) is of utmost importance when dealing with migration cases. This also leads to a sometimes confusing amount and rapid development of the Strasbourg case law.

Most importantly, everybody is granted the right to leave any country under Article 2.2 of Protocol 4 to the ECHR. However, this does not grant unlimited right to enter another country. This becomes relevant when other states take measures against uncontrolled and unauthorized entrances – most famously detaining arrivals and waiting for asylum procedures. Article 5 of the ECHR prohibits arbitrary detention and makes any detention subject to the rule of law. In conjunction with Article 3 ECHR it was held to prescribe a minimum standard that migrants must enjoy when being detained. This concerns for example space, access to washing facilities, and clean water.

Another case in which migrants might be detained is to pursue deportation proceedings. Although there is no requirement of necessity for this kind of detention, it is governed by the principle of non-refoulement and therefore by the jurisdiction of the ECtHR: Under non-refoulement nobody can be sent back to a country in which he or she reasonably has to fear for their health and life. This has led the ECtHR to effectively overrule the Dublin Regulation in some cases, most importantly when the country of first entrance suffers from structural failures. A recent and very welcomed development on this area was a judgement in which the ECtHR acknowledged that serious illness can also trigger non-refoulement under reasonable circumstances.

The ECtHR also held some recent landmark judgements regarding collective expulsion (which is forbidden under Article 4 of Protocol 4 to the ECHR). The new rulings might prove to substantially improve the situation of migrants, especially when caught immediately behind national borders or when issued with a procedure under the Dublin Regulation.

All in all, even if the ECHR does not take them particularly into account, the Convention is an important document when it comes to the protection of migrants in Europe. A huge part of this comes due to the jurisdiction of the ECtHR, that, even if it is highly criticism-deserving at times, often proves to oppose politically questionable practices and to assess the reality migrants face quite well. As the 'Migration Crisis' does not seem to end anytime soon one can remain curious about new developments that will definitely come with new Strasbourg case law.

GENOCIDE DENIAL AND HATE SPEECH IN THE LIGHT OF THE FREEDOM OF EXPRESSION, ART. 10 ECHR

BENEDIKT JEUTNER

The paper focused on the topic freedom of expression in general, the European and German approaches, and took a stronger look on the topics hate speech and genocide denial. In the presentation, the Armenian perspective was also added. The paper looked at the broad freedoms granted under Article 10 of the European Convention on Human Rights and the possible limitations set by the Convention. One possibility is to exclude the protection of Article 10 when an expression is against the spirit of the Convention and Article 17 is applied. Another possibility of limitations exists in cases of collisions with other guarantees such as Article 8, the right to privacy. Article 10 itself sets guidelines under which a restriction is possible. A comparison between the German laws concerning this topic and Article 10 showed for example, that in Germany fact statements are not included under the protection of freedom of expression whereas the ECHR includes such expressions.

A central point of the paper was outlining two different ways in western democracies of dealing with freedom of expression. The paper summarized them under the militant democracy and the liberal approach. In the following, some arguments are given for and against each approach in general and at the example of Germany. An argument for the liberal approach is that Germany has become a solid, stable and democratic country after the Second World War and is a strong power in Europe and in the international community. Germans do not only support the institutions, but the idea of democracy itself. It seems very unlikely that undemocratic powers will overthrow the current system. Drastic safety measurements such as limitations to freedom of expression are not needed. On the other hand a democracy has to be able to defend itself against its enemies. Even though at the moment the German political system is not in danger, this can change very rapidly. Just in the last year two events (Brexit and the election of Donald Trump) proved that general trust in stable democracies may be unjustified. Another topic are minority rights which a democratic country should protect. Limitations on freedom of expression could lead to a majority dictating what to think and therefore contradicting the minority protection principle. But minority rights are also at stake when such groups are the aim of for example hate speech. Not only the expressionist needs protection, the victims may need it too.

Not to be underestimated is the chilling effect more drastic laws on freedom of expression could evoke. People could withdraw from the public discourse when they are too afraid to participate in the exchange of ideas because they fear legal prosecution. However, those who are offended by someone else's freedom of expression could also withdraw from the public because they cannot stand the

hate they have to face. All arguments are ambivalent and the decision which path should be followed is a decision about our most basic values and ideas about a good living and democracy.

The paper also looked at the vague term of hate speech and which criteria the court developed to determine the threshold at which point expressions can be regarded as hate speech. The question was considered whether it is reasonable to look at genocide denial as a part of hate speech or if it should be addressed separately. Interesting to examine were the different approaches of the European Court of Human Rights when it comes to different genocides and respective denials. The Court differentiates between different atrocities. The paper presented the arguments the judges put forward when they allowed denial of the Armenian genocide but condemned Holocaust deniers. The case *Perinçek v. Switzerland* is a good example. The Court held that the Holocaust is a clearly established historical fact, whereas the Armenian genocide is still debated among historians. But even within the Court, this is highly controversial with seven judges agreeing on a dissenting opinion stating that the Armenian genocide is a clearly established historical fact too. Other arguments concerned the intent and the geographical and historical side. During the German-Armenian exchange, notable differences between the two national legal systems emerged on this topic. Denying the Holocaust is a crime in Germany. A comparable law concerning the Armenian genocide in Armenia does not exist. The reasons for that could be that such cases simply do not exist in Armenia.

RESTRICTIONS OF HUMAN RIGHTS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN THE NAME OF PUBLIC MORALITY

SARAH RIHANE

The European Convention on Human Rights (ECHR) sees many possibilities to restrict human rights. One of these includes the feasibility of restricting freedoms in the name of public morality. There are a total of six articles that allow for a limitation in the name of morality: Articles 6, 8, 9, 10, 11, and Article 2 of the 4th Protocol. Most of these articles are divided into two paragraphs. The right is outlined in the first one, while its admissible constraints are listed in the second.

Although the ECHR names morality as a ground to restrict human rights, it does not offer a clear definition for the term. However, the European Court of Human Rights (ECtHR) has devised a way of handling the issue. Since it largely bases its decisions on case law, meaning it looks at how previous cases concerning the ECHR have been treated and relies on these judgements as reference points, some criteria for dealing with morality have been laid down in the famous *Handyside v. United Kingdom* case. The Court came to the conclusion that “it is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals” since morals vary “from time to time and from place to place”, especially when the era we live in is characterized “by a rapid and far-reaching evolution of opinions” on morality. Therefore, the Court leaves the states a margin of appreciation, which enables them to have a degree of latitude to enact laws and social policies that take into account their own culture and values.

The margin of appreciation doctrine does not, however, give the contracting countries unlimited space. This is due to the principle of proportionality, which the court conceived to limit the power of state authorities to interfere in rights of the individual. Hence, the measures taken by the states undergo scrutiny by the ECtHR to determine whether they exceed the limits of their discretion, and whether the rights enshrined in the Convention are being protected and ensured effectively.

When comparing the legal issue of morality in Germany and Armenia, one can find quite different approaches. In Germany, the courts have devised a concrete definition for public morality. The equivalents are “*öffentliche Ordnung*” (public order) and “*gute Sitten*” (morality). The public order is very closely linked to morality, so the two are often looked at as one unit. Public order includes the totality of the unwritten rules which, according to the prevailing social and ethical views, are regarded as an indispensable prerequisite for an orderly human coexistence within a particular area. The social and ethical views can fall under the term “*gute Sitten*”, which are described as the feeling of decency of

all equitable and just minded people. While the definition is present, it is not necessarily more evident what is meant under these terms, and just like with the ECHR, one is left in the dark.

In Armenia on the other hand, there no specific doctrine or legal precedent by courts. However, there is a general understanding of the term morality, and restrictions in the name of morality are possible if they are prescribed by law and follow a legitimate aim.

The problem with the way the ECtHR approaches issues concerning morality is that it deliberately leaves the Contracting States a lot of space to make their own interpretation of morality through the margin of appreciation doctrine. Allowing for such a charged concept to remain unclear and undefined – while still being a legitimate reason to restrict freedoms – can lead to abusive and restrictive interpretations from state courts. Indeed, the concept of morality can be extended to any aspect of human activity and life, so much so that almost any action can be deemed or interpreted as morally unacceptable. The resulting effect is that any individual action or activity, any idea or its public expression may end up being limited, if not completely prohibited by the courts because of the perceived adverse impact on the current and prevailing moral convictions in society. If human rights have such an important value, why is it then that they able to be restricted by such an ambiguous concept as public morality?

CYBER SECURITY UNDER ECHR - PRIVACY AND DATA PROTECTION

AURA KRAUS

The rapid development of computer connectivity and the exponential growth of digital technology have brought enormous benefits. But these benefits come with greater risks both domestically and across borders. While the process of globalization continues to accelerate through better Internet connectivity and faster data exchange. The Internet is at risk to develop into a lawless frontier-style Internet culture with no security and endless possibilities for criminality. In a legal definition, computer crime is crime that involves a computer or a network. Either the computer may have been used to commit the crime or it may be the target.

The task of identifying cyber-criminals and bringing them to justice poses formidable challenges to law enforcement agencies across the globe and require a degree and timeliness of corporation that has been regarded as very difficult and challenging to achieve. Crucially, many cyber crimes take place across jurisdictional boundaries with offenders routing attacks through various jurisdictions. Those crimes can only be countered by a cross border and international policy response.

Citizens of member states to the Council of Europe who claim a violation of privacy can find a remedy in Article 8 of the ECHR in case their domestic legislation does not provide effective response to their claims. Article 8 ECHR states that everyone has the right to respect for his private and family life, his home and correspondence. Privacy violations made in cyber space are not specifically mentioned but are interpreted into the Article. Also Article 10 of the ECHR serves as a legal remedy when it comes to privacy violations of service providers, that do not want to reveal names of their users in order to protect their interests. When it comes to cyber criminality, the ECHR does not entail any criminal offenses, wherefore there are other conventions setting ground rules for solving that matter.

The most important one being the Budapest Convention on Cybercrime, which is the first international treaty seeking to address Internet and computer crime by harmonizing national law, increasing cooperation among nations and improving investigative techniques. Both Armenia and Germany have signed the Convention to follow its three objectives of firstly establishing a number of criminal offenses, secondly ensuring that such legislation facilitates certain basic procedural requirements and thirdly establishing a framework for international collaboration.

While Germany has established specific criminal offenses regarding cyber security in its criminal code, such as para. 202a, 303a, 303b StGB. Armenia has not yet, but relies on the general offenses of their criminal code. The German legislature has also established laws based on Article 8 of the ECHR to ensure the privacy in cyberspace. In Armenia the ECHR is part of the national law. Therefore, no specific provisions had to be created.

There are also differences in law enforcement. The German Federal Office of Criminal Investigation has established various operating areas for different cyber crime offenses to ensure more sufficient law enforcement and enhance security in cyberspace. In Armenia there are bigger issues with law enforcement. Almost no crimes are reported and the government does not have sufficient remedies to combat cyber criminals. It has been in discussion to establish an operating area but nothing has been decided yet.

IMPLICATIONS OF THE MARGIN OF APPRECIATION AND THE PRINCIPLE OF SUBSIDIARITY

ANTONIUS A. ACHTNER

The margin of appreciation is one of the most important concepts developed by the jurisprudence of the European Court of Human Rights in the application of the European Convention on Human Rights. It is used as a doctrinal tool by the Court to allow states to continue implementing a policy while retaining the freedom to later declare similar practices unconventional. Its central conceptual root is the principle of subsidiarity that on the one hand encourages local decision-making and on the other hand justifies the intervention of higher levels of government if the well-being of the population requires it. In doing so, it embraces the cultural differences between regions.

The margin of appreciation is commonly described as a concept of judicial self-restraint that the ECtHR uses whenever it feels that national authorities are in a better position to decide on a certain question. Its use in five contemporary judgments concerning same sex-partnership and religious clothing is analyzed against the backdrop of subsidiarity. The analyzed judgments are *Vallianatos and others v Greece*, *Oliari and others v Italy*, *Schalk and Kopf v Austria*, *Leyla Sahin v Turkey* and *SAS v France*. Subsidiarity, it is concluded, can deepen the understanding of some of the decisions, but does not seem to be the sole factor determining when and to what extent a margin of appreciation will be granted by the Court. Especially, the European consensus criterion needs a more consistent application.

Another interesting side-aspect of the topic is the judiciary-driven development of the legal recognition of same sex-partnerships in Germany and the interplay between the European Court of Human Rights and the German Federal Constitutional Court in this process. The two courts do not only complement each other in their standard of control but also influence each other in their reasoning.

The effects of the margin of appreciation can be evaluated with a view to universalism and cultural relativism, two philosophical approaches to the determination of moral values. It can be argued that, although the margin of appreciation does allow for different human rights standards in different countries, it does not amount to cultural relativism. Rather, it allows a differentiation between 'hard' and 'soft' standards, securing a common core of behaviour protected in all the States Parties to the Convention. In other areas, especially culturally sensitive ones (such as the legal recognition of same sex-partnerships), the European Court of Human Rights allows a greater leeway to national legislators. The need for such flexible instruments was demonstrated by an impressive comparison of Armenian and German statistical data showing huge differences in the attitude towards homosexuality.

DISENFRANCHISEMENT IN THE LIGHT OF THE RIGHT TO FREE ELECTIONS UNDER THE ECHR

LAURA PILARSKI

Disenfranchisement means the abolishment of the right to vote. Article 3 of Protocol No. 1 to the European Convention on Human Rights (ECHR) obligates the member states to hold free elections of the legislating power by secret ballot at an interval of about five years. This gives people the active right to vote and the passive right to candidate in the elections. As the right to free elections is not absolute, it can be limited if the aim pursued is legitimate. If individuals feel violated in their right to vote, they can apply to the European Court of Human Rights (ECtHR) after exhausting all domestic remedies. Most of the cases of disenfranchisement brought to the ECtHR concerned prisoners. But recently, there have been cases of disabled and mentally ill people, too. However, many of the Court's judgements result from the vague formulation of Article 3 of Protocol No. 1 that became effective in 1954 and has not yet been revised. The Court emphasized in all its judgements that each case must be looked at individually and declared automatic restrictions of the right to free elections as unconventional.

Voting is essential for the resocialization of prisoners because it helps them to reinforce their relation to the rule of law and to society. For that reason, a prisoner can only be deprived of their right to vote if the crime committed put the state at risk. The German Federal Electoral Law imposes in Section 13 Subsection 1 that the domestic courts assess each case individually; prisoners can only be disenfranchised if they have been convicted for crimes like high treason or electoral fraud. Subsection 2 to Section 13 imposes that criminals detained in a mental hospital lose their right to vote. Furthermore, Section 45 Subsection 1 of the German Criminal Code intends for criminals convicted to more than one year in prison for a crime with a minimum penalty of one year to lose their passive right to vote for five years.

For the part of Armenia, Article 30 of the new constitution that became effective in 2015 gives eighteen-year-old citizens the right to take part in the elections but also imposes that they can be found incompetent to vote due to a prison sentence by a Court's decision. In terms of ill people, the German law distinguishes between people that are under full and those under partial supervision. Fully supervised people lose their right to vote because they can be manipulated easily, whereas partially supervised people can vote without restrictions. Armenia does not yet have a law on the right to vote of ill people. Looking at the recent developments with the emergence of ill people in ECtHR cases however, it is likely that more legislators of ECHR members will consider this matter soon.

THANK YOU

