

Research programme *Effective Protection of Fundamental Rights in a Pluralist World*

Annual report 2021



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Annual report 2019

**Research programme *Effective Protection of
Fundamental Rights in a Pluralist World***



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Introduction

Dear reader,

We are pleased to present the 2021 Annual Report of the research programme Effective Protection of Fundamental Rights in a Pluralist World (EPFR) of Leiden University, School of Law. Another year with Covid challenges and on line and hybrid activities, but still a year in which much interesting research was carried out, new ideas and collaborations were developed, and grant proposals written – and sometimes these grant were even awarded.

The EPFR programme explores the dynamics of institutional and normative diversity regarding fundamental rights protection against the backdrop of the socio-cultural, political, and economic pluralism that is a prominent feature of today's world, both globally and locally. It investigates what opportunities and threats flow from the existence of this diversity for the effective protection of fundamental rights.

The EPFR research group consists of researchers from a variety of (sub)disciplinary backgrounds and from across departments and institutes of the faculty of law: Department

of Constitutional and Administrative law; eLaw, Center for Law and Digital Technologies; Department of Child Law; Van Vollenhoven Institute for Law, Governance and Society; Department of European Law; Grotius Centre for International legal studies; Institute of Immigration Law; Institute of Criminal Law and Criminology.

We hope this annual report will give you a good impression of this thriving community of researchers and their research activities in 2021. In addition to an overview of the scholarly output in this year we are pleased to present you a selection of significant events and highlights of 2021, including inaugural lectures, PhD defenses and conferences and seminars we organized.

Janine Ubink
EPFR Coordinator



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Selection of highlights

Mark Leiser part of winning consortium of €1.5 million Volkswagen Foundation research grant



Dr Mark Leiser, Assistant Professor in Law and Digital Technologies at eLaw, is part of a successful €1.5 million bid for a research grant from the acclaimed Volkswagen Institute on “Reclaiming individual autonomy and democratic discourse online: How to rebalance human and algorithmic decision making”.

Many concerns have been voiced over the practice of political microtargeting: Platforms’ knowledge about users is growing exponentially, but users know little about data platforms or how data drives algorithmic delivery of content. This asymmetry and lack of transparency opens the door to manipulation through micro-targeting of political messages that aim to exploit personal vulnerabilities. Actors are using citizens’ personal data to tailor political advertisements to individuals’ susceptibilities, biases, and errors, which can, in turn, influence voting behaviour.

This truly cross- and interdisciplinary research programme will identify evidence-based ways to reclaim individual autonomy and to redress the imbalance in the relationship between human decision-makers and corporate algorithms. This will be pursued by: (1) designing information

architectures that are transparent and act in the interests of the user rather than the advertisers or the platform; and (2) promoting people’s cognitive competences to navigate digital environments and guard themselves against manipulation.

<https://www.universiteitleiden.nl/en/news/2021/01/mark-leiser-elaw-part-of-winning-consortium-of-1.5-million-volkswagen-foundation-research-grant>

KHMW appoints five new Leiden members

The Royal Holland Society of Sciences and Humanities (KHMW) has appointed five new members from Leiden, including prof. Maartje van der Woude, professor of Law and Society at the Van Vollenhoven Institute.

The Royal Holland Society of Sciences and Humanities (KHMS) was established in 1752 and has worked since then to bridge the gap between science and society. It consists on the one hand of representatives from society who are interested in science – known as directors, currently numbering around 400 – and on the other hand of a group of scholars – known as members, currently numbering around 500 professors. The members are responsible for the scientific activities of the KHMW: awarding prizes for scientific achievements, holding lecturers and producing publications.

<https://www.universiteitleiden.nl/en/news/2021/02/khmw-appoints-five-new-leiden-members>

Maartje van der Woude, Professor of Law and Society, organises the House of Misconceptions, together with art collective Liquid Society.



The House of Misconceptions takes you into the world of implicit and explicit perceptions and biases that people have about society, particularly about each other and groups of 'others'. These 'others' can stand out due to their different skin colour or different cultural and religious habits and norms. Do we indeed

fear the unknown? And, if so, to what extent are we aware of this? How does this hinder us from leading a full and rich life? The House of Misconceptions invites you to engage with the subconscious side of your perceptions and to enter into dialogue about this with yourself and each other.

<https://www.universiteitleiden.nl/en/news/2021/08/house-of-misconceptions>

Jaap van den Herik receives royal distinction on his retirement

Jaap van den Herik was appointed Officer in the Order of Orange Nassau on 8 October on his retirement as professor of Law and Information Technology.

After delivering his farewell address on 8 October, Van den Herik had a pleasant surprise: he was awarded a royal decoration. He owes his appointment as Officer in the Order of Orange Nassau in part to his scientific research over many years, but also to his volunteer work.

Pioneer in artificial intelligence

Van den Herik has worked for Leiden University since 1984, at the interface between law and information technology. In 1988 he was appointed professor of Law and Information Technology at the Center for Law in the Information Society (eLaw). Since 2014 he has also been affiliated with the Leiden Institute of Advanced Computer Science (LIACS), where he was co-founder of the Leiden Centre of Data Science (LCDS). He is also a pioneer in the field of Artificial Intelligence, a field that is growing in importance.

<https://www.universiteitleiden.nl/en/news/2021/10/jaap-van-den-herik-receives-royal-honour>



Leiden Centre of Data Science (LCDS) commissioned to conduct a study into the use of legal tech in The Hague.

The Hague municipality wants to attract more legal tech start-ups. The municipality has therefore commissioned the Leiden Centre of Data Science (LCDS) of Leiden University to conduct a study into the use of legal tech in The Hague.

'In this way, The Hague aims to project its identity as the City of Peace and Justice', explains research leader and emeritus

Professor of Law and IT Jaap van den Herik. ‘This will help in putting The Hague on the map.’

The commission for the University is a direct result of the new Dutch-taught study programme Leiden Legal Technologies which is to be taught in The Hague. Three faculties will work together in teaching the programme: Leiden Law School, the Faculty of Science, and the Faculty of Governance and Global Affairs. The Hague municipality and the Ministry of Justice and Security also participate. The study programme will start in March.

According to Jaap van den Herik, this is a unique study programme in the Netherlands, since lawyers can learn how they can use Artificial Intelligence (AI) to support the administration of justice.

<https://www.universiteitleiden.nl/en/news/2021/01/the-hague-aims-to-attract-legal-tech-start-ups>

Code for children’s rights: Designing technology with children in mind



On Friday 12 March 2021, the (Dutch) website www.codevoorkinderrechten.nl was launched. This code for children’s rights has been created to help those involved in

the development and design of digital services to develop these services with the interests of children in mind.

Commissioned by the Ministry of the Interior and Kingdom Relations, together with Waag Technology & Society, the Centre for Law and Digital Technologies (eLaw) of Leiden University has produced the code after consulting with children, designers, tech developers and other experts. Apps and games play an increasingly greater role in the lives of children with them spending far more time on them. Digital technology therefore plays an important part in how children develop. What is seen in practice, however, is that when these technologies are designed, choices are made that are not in the interests of children, of that could even be damaging to their wellbeing.

The code has ten principles, each one based on rules and regulations such as the UN Convention on the Rights of the Child and the GDPR. For each principle, practical examples are provided for implementing the rights of the child. The guiding principles for the code are putting the interests of the child first and actively involving children in the design of a digital service.

<https://www.universiteitleiden.nl/en/news/2021/03/code-for-childrens-rights-designing-technology-with-children-in-mind>

Simone van der Hof awarded EU funding for research on age verification and consent mechanisms

As part of the euCONSENT consortium, the Center for Law and Digital Technologies (eLaw) has been awarded European Commission funding to create a child rights’ centered cross-

border system for online age verification and parental consent.

The euCONSENT consortium consists of twelve of the continent's leading academic institutions, NGOs and technology providers, including professor Simone van der Hof, professor of Law and Digital Technologies at eLaw. The consortium has been awarded EU funding to design, deliver and pilot a new Europe-wide system. This solution will allow service providers to verify the age of their users to protect them from harmful content, and will ensure that younger children have parental consent before they share personal data. The Age Verification Providers Association is a leading member of the team that will deliver this system.

The objective of this project, initiated by the European Parliament, is to demonstrate an interoperable technical infrastructure dedicated to the implementation of child protection mechanisms (such as age verification) and parental consent mechanisms as required by relevant EU legislation (such as the Audio-Visual Media Services Directive (AVMSD) and the General Data Protection Regulation (GDPR)).

<https://www.universiteitleiden.nl/en/news/2021/04/simone-van-der-hof-awarded-eu-funding-for-research-on-age-verification-and-consent-mechanisms>

Simone van der Hof joins the Supervisory Board of the Foundation for Mass Claims and Consumers

Professor Simone van der Hof, professor of Law and Digital Technologies at eLaw, joined the Supervisory Board of the

Foundation for Mass Claims and Consumers in connection with the Foundation's claim against TikTok.



The Foundation defends the rights of consumers in the event of mass damage by taking collective action. Earlier, the foundation already organised a collective action against AirBnB for charging double service costs. The claim against TikTok concerns the unlawful

collection and resale of the personal data of TikTok users, including many minors.

<https://www.universiteitleiden.nl/en/news/2021/09/simone-van-der-hof-joins-the-supervisory-board-of-the-foundation-for-mass-claims-and-consumers>

Camille Lefebvre receives John Peters Humphrey Student Fellowship



Camille Lefebvre, PhD candidate at the Graduate School of International Studies of Université Laval and the Van Vollenhoven Institute has been awarded the John Peters Humphrey Student Fellowship in International Human Rights Law, by the Canadian Council

on International Law (CCIL).

This program is the result of a generous donation made to the CCIL by the late John Peters Humphrey, a renowned Canadian international lawyer and scholar. This Fellowship is awarded to outstanding students in order to permit them to pursue full-time graduate studies at leading institutions. Under the codirection of Professor Maartje van der Woude and Philippe Bourbeau, Camille will be studying the implementation of International law in Canada, analyzing more specifically expulsion and detention pertaining to the immigration regime.

<https://www.universiteitleiden.nl/en/news/2021/05/camille-lefebvre-receives-john-peters-humphrey-student-fellowship>

Research report ‘Interpretation and implementation of the Returns Directive’



Peter Rodrigues



Mark Klaassen

The Europa Institute of Leiden University was asked by the Dutch Repatriation and Departure Service and commissioned by the Research and Documentation Centre of the Ministry of Justice and Security to investigate the implementation of the EU Returns Directive. The EU

Returns Directive is an important instrument to humanely return third-country nationals without lawful residence to their country of origin. However, the return of third-country nationals remains problematic for a number of reasons. The first research question is what the influence of the Returns Directive and the case law on the Directive has been on the return of third-country nationals and the use of immigration detention in the past decade. The second research question is what this influence has been in Belgium, Denmark, Germany and Norway.

Foreign nationals without lawful residence must return to their country of origin and should be issued a return decision. This can lead to different return trajectories. The foreign national can return independently with supervision, for instance with the use of return support by the International Organization for Migration. The foreign national can also return independently without supervision. In that case the domestic authorities often lose track of the foreign national and it is unsure whether the foreign national has actually returned or is still present in the territory of the host state. A third option is that the foreign national is forcibly removed. In the Netherlands and in the other states that have been investigated in this research project, there is a preference for independent return with supervision, as this is perceived to be less burdensome for both the foreign national and the domestic authorities.

<https://repository.wodc.nl/handle/20.500.12832/3051>
<https://www.universiteitleiden.nl/nieuws/2021/05/onderzoeksrapport-interpretatie-en-implementatie-van-de-terugkeerrichtlijn>

Aleydis Nissen Wins Two Thesis Prizes



Aleydis Nissen

Aleydis Nissen was awarded the René Cassin Thesis Prize 2021 by the René Cassin Foundation - International Institute of Human Rights, and the Andrés Bello Prize 2021 by the Geneva-based Institut de Droit International.

<https://www.universiteitleiden.nl/en/news/2021/09/aleydis-nissen-wins-the-andres-bello-prize-institut-de-droit-international>

<https://www.universiteitleiden.nl/en/news/2021/09/rene-cassin-thesis-prize-in-human-rights-for-aleydis-nissen>

Leiden Overview on SOGIESC in International Law



Kees Waaldijk



Waruguru Gaitho

Professor of Comparative Sexual Orientation Law Kees Waaldijk and Ven Vollenhoven Institute lecturer Waruguru Gaitho put together the Leiden Overview on SOGIESC in International Law. The overview contains a list of online introductory video/audio/reading materials on the international legal aspects of Sexual Orientation, Gender Identity/Expression, Sex Characteristics (SOGIESC).

www.universiteitleiden.nl/en/education/study-programmes/summer-schools/sexual-orientation-and-gender-identity-in-international-law-human-rights-and-beyond/leiden-overview-on-sogiesc-in-international-law

PhD defenses

Fachrizal Afandi, *Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the case of Indonesia*

On 21 January 2021, Fachrizal Afandi defended his thesis '*Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the case of Indonesia*'. The doctoral research was supervised by Prof. A.W. Bedner and Prof. J.H. Crijns.



This research gives a comprehensive account of the public prosecutor's role in post-authoritarian Indonesia, both in promoting the rule of law and in maintaining the political status quo. It traces the development of the Indonesian prosecution service, historically and politically, exploring what and who influences its performance, as well as how

public prosecutors work in practice.

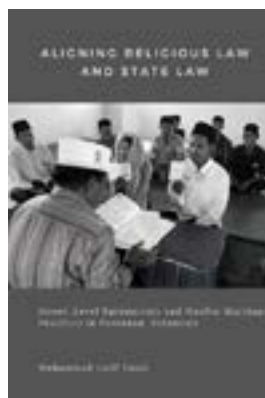
The case of Indonesia constitutes an example of the way in which prosecution services evolve in countries marked by authoritarian tendencies. It shows how various regimes position public prosecutors as 'justice postmen', who deliver cases based on the government's interests, as well as on the interests of other powerful actors, such as political parties, companies, or the police force. Such situations are commonly seen in authoritarian countries, where the executive dominates political power, and public prosecutors have

become tools of the government in maintaining political order.

<https://www.universiteitleiden.nl/en/news/2021/02/phd-defense-fachrizal-afandi-21-january-2021>

Latif Fauzi, *Aligning religious law and state law: Street-level bureaucrats and Muslim Marriage practices in Pasuruan Indonesia*

On 18 May 2021, Latif Fauzi defended his thesis '*Aligning religious law and state law: Street-level bureaucrats and Muslim Marriage practices in Pasuruan Indonesia*'. The doctoral research was supervised by Prof. A.W. Bedner and Prof. L.P.H.M. Buskens.



This thesis discusses the ways in which local officials deal with the tensions concerning regulations on Muslim marriage and social practices that emerge as a response to such regulations. By looking at the implementation of legal norms on marriage, the functioning of marriage bureaucracy and the people's attitudes towards

state recognition of marriage in the local setting, this thesis suggests that Indonesia is experiencing a continuing process

of the penetration of state law into society. At the law-making level, instead of reforming the substance of the marriage law, which would only stir up controversy and debates, the government has used a citizens' rights approach to control marriage practice. This citizens' rights approach is helpful in guiding people towards compliance with the state legal framework.

Furthermore, the central state is also endeavouring to remove all forms of informality from the procedures involved. Nevertheless, in practice, it seems it is an uphill battle to reduce informal intervention. In the end, the willingness of the state officials to give a less than strict interpretation of legal rules is key to guaranteeing the functioning of the state law and will be good for the legal development of Indonesia in the future.

<https://www.universiteitleiden.nl/en/research/research-output/humanities/aligning-religious-law-and-state-law>

Mariana Gkliati, *Systemic accountability of the European Border and Coast Guard: the legal responsibility of Frontex for human rights violations*

On 11 November 2021, Mariana Gkliati defended her thesis '*Systemic accountability of the European Border and Coast Guard: the legal responsibility of Frontex for human rights violations*'. The doctoral research was supervised by Prof. P. Rodrigues and Prof. L. Besselink (UvA)

There has never been a more pertinent time to discuss the



accountability and the legal responsibility of Frontex, the European Border and Coast Guard Agency, for fundamental rights violations. In a period that hosts the first legal actions vis-à-vis the agency and a series of relevant non-judicial investigations, including by the European Parliament, this dissertation aims to address the main problem underlying these accountability efforts, namely the 'problem of many hands'. As conceptualised by Dennis Thompson, this problem is where the multiplicity of the actors involved obscures the various responsibilities and creates gaps in accountability. To address it, this work contests the dominant ways of looking at the concepts of responsibility and accountability, and reimagines them for their optimal function.

<https://scholarlypublications.universiteitleiden.nl/handle/1887/3240559>

Selection of Conferences and Seminars

Hans-Martien ten Napel on Tocqueville and modern democracy

On 16 February, Hans-Martien ten Napel, together with Professor of Religion, Law, and Society at Radboud University Sophie van Bijsterveld, contributed to a Radboud Reflects programme on what the French philosopher Alexis de Tocqueville would think of modern Dutch democracy. A podcast and a video of the programme that drew 300 registered participants are now available here.

In the run-up to the programme, Van Bijsterveld and Ten Napel also published an essay on ‘Tocqueville and modern democracy’ on *Het Goede Leven* and an opinion article ‘*Wat wij in de toeslagenaffaire kunnen leren van Tocqueville*’ (What we can learn from Tocqueville in the child benefits scandal), in the *Reformatorisch Dagblad*.



Maatschappij & Politiek, Vakblad voor Maatschappijleer

The programme and publications build on the recently published volume by Boom juridisch, *Een nieuwe politieke formule. Ideeën voor staat en samenleving geïnspireerd door Alexis de Tocqueville* (A New Political Formula. Ideas for State and Society Inspired by Alexis de Tocqueville) (2021).

(Society & Politics, Professional Journal for Social Studies) (21-01), a publication of ProDemos - House for Democracy and the Rule of Law, contains this pre-publication, with a review.

<https://www.universiteitleiden.nl/en/news/2021/02/hans-martien-ten-napel-on-tocqueville-and-modern-democracy>

Building land tenure systems: The political, legal, and institutional struggles of Timor-Leste

Bernardo Almeida gave a webinar on Building Land Tenure Systems in Timor-Leste on February 18, 2021, rganized by the KITLV.



Land tenure issues in Timor-Leste are complex and deeply shaped by the nation's history. In this presentation Bernardo Almeida will summarize the main findings of his PhD thesis where he, taking an insider's perspective, studies the development of the Timorese formal land tenure system from independence in 2002 to 2018. Bernardo will show how political, legal, and administrative decisions on land administration are made, what and who influences them, which problems and dilemmas politicians and state officials face, and how the formal land tenure system works

in practice. This findings are based on the investigation of five analytical themes: political environment, lawmaking, legal framework, institutional framework, and social relationships and practices. The result is a portrait of a young nation grappling with the enormous task of creating a land tenure system that can address the needs of its citizens in the wake of centuries of socio-political tumult and huge fluctuations in resources, while seeking to find its place on the world stage as a new nation.

<https://www.universiteitleiden.nl/en/news/2021/02/webinar-on-building-land-tenure-systems-in-timor-leste-by-bernardo-almeida-18-february-2021>

eLaw panel on Art and Algorithmic Accountability at CPDP 2021



In January 2021, eLaw joined the Computers Privacy and Data Protection (CPDP) Conference that is about privacy and data protection. The group on Law and Digital Technologies at Leiden University put together a panel that combined perspectives on Art, Society, & Technology.

eLaw - Center for Law and Digital Technologies at Leiden University, hosted a panel at CPDP 2021 on algorithmic accountability. The panel started with an overview of how

the Arts play an essential role in intervening in critical social issues, such as labor politics, privacy, and education. The panel then drew our attention to a specific case scenario, i.e., urban algorithmic accountability. We learned about the digitization of cities and how municipal data professionals can give testimony of algorithmic-based decisions that affect citizens. The panel closed with some artistic perspectives on transparency and the role that education plays in stressing the importance of being accountable in an increasingly algorithmic society.

The panel discussion was divided into three clusters:

- (1) the Interplay of Art, Society and Technology
- (2) Algorithmic Accountability and Art
- (3) Art, Education, and Responsibility

<https://www.universiteitleiden.nl/en/news/2021/03/elaw-panel-on-art-and-algorithmic-accountability-at-cpdp-2021>

Robots and Society (RO-SO) Tutorial at RO-MAN 2021 Conference



The University of Oslo and Leiden University have joined forces to organise a Tutorial on Robots and Society: Ethical, Legal, and Technical Perspectives on Integrating Robots in the Home and Healthcare Systems and Services at the IEEE

International Conference on Robot and Human Interactive Communication.

The latest advanced technologies, such as intelligent robots and Artificial Intelligence (AI) based systems, present both challenges and opportunities for different fields. One of the fields where robots seem to be promising is home and healthcare services. These types of assistive and social robots seem to be well integrated already in certain cultures, such as in Japan, due to the (techno-) animism tradition well-embedded in their society. In Western culture, however, robots are not (yet) as well accepted as being part of our everyday lives, in our homes, hospitals, rehabilitation or other care processes.

Introducing robots in the home to perform sensible tasks is not straightforward and raises many questions concerning the quality and safety of care delivered. The Robotics and Intelligent Systems (ROBIN) Research Group and the Norwegian Research Center for Computers and Law (NRCCL) from the University of Oslo, and eLaw - Center for Law and Digital Technologies of Leiden University have collaborated to organise a tutorial at an international conference to find out what these questions are.

<https://www.universiteitleiden.nl/en/news/2021/05/robots-and-society-ro-so-tutorial-at-ro-man-2021-conference>

SAILS Summer Conference on Law & AI

Leiden Law School is organising a summer conference on Law and Artificial Intelligence as part of the interfaculty and interdisciplinary research programme on Artificial Intelligence (SAILS) at Leiden University.

Law & Artificial Intelligence

Artificial Intelligence (AI) represents the progress of science. It offers possibilities that were unimaginable until recently and can solve problems faster, better, and more innovatively than ever before. Yet, while such new technologies may provide hope and change, they inevitably disrupt how we conceive reality, leading us to question and challenge existing norms and pushing us towards an increasingly louder call for legal change. While the pace of technology is accelerating dramatically, however, legal responsiveness is not always following as a consequent step. For AI, on the contrary, the European institutions released a proposal for a regulation laying down harmonised rules on artificial intelligence. This proposal has sparked much discussion among scholars, raising the question of whether these rules will provide enough safeguards to ensure AI is safe for society.

<https://www.universiteitleiden.nl/en/news/2021/05/sails-summer-conference-on-law--ai>

Lecture series ‘Reconsidering the Socio-Legal Gaze’

The Van Vollenhoven Institute is organising a year-long public lecture series entitled ‘Reconsidering the Socio-Legal Gaze’. The lecture series aims to spark critical debates about the visions of justice and positions of power that inform Law and Society scholarship at Leiden and beyond.

The series will start the first semester with three lectures that will reflect on the birth of socio-legal scholarship in the context of Dutch colonial administration (‘Dutch Colonial Foundations’). The lectures of the second semester will focus



on ‘Future Horizons’ of socio-legal scholarship in the context of three key values that drive contemporary scholarship: decolonization, diversity, and development.

The lecture series is organised by the Van Vollenhoven Institute Diversity and Inclusion Committee, the first of its kind at Leiden Law School.

<https://www.universiteitleiden.nl/en/news/2021/10/lecture-series-reconsidering-the-socio-legal-gaze>

Dr Vasiliki Kosta speaks at ECB Legal Conference 2021



Dr Kosta, associate professor at the Europe Institute participated in the ECB Legal Conference 2021 titled ‘Continuity and change – how the challenges of today prepare the ground of tomorrow’. Dr Kosta spoke in the ‘Symposium on Proportionality’ and presented a taxonomy of the principle of proportionality in EU law based on the interest that it serves.

The symposium was opened by Christine Lagarde, President of the European Central Bank and the keynote speech was delivered by Koen Lenaerts, President of the Court of Justice of the EU. The Symposium on Proportionality was chaired by Chiara Zilioli, Director General Legal Services, European Central Bank.

<https://www.universiteitleiden.nl/en/news/2021/12/dr.-vasiliki-kosta-speaks-at-ecb-legal-conference-2021>

Simone van der Hof in podcast on GDPR and children’s rights

28 January 2021



In a podcast of the Netherlands Internet Governance Forum (NL GF) and the Safer Internet Centre Nederland, Simone van der Hof, Professor of Law and Digital Technologies at Leiden University and Thijs Hannema, a lawyer at Kennedy van der Laan, discuss online privacy of children.

Research shows that children are susceptible to online marketing. If marketing is also geared towards children, the privacy of children is soon compromised.

Companies and parents still have much to learn when it comes to the data and privacy of children. The General Data Protection Regulation (GDPR) gives extra protection to children younger than 16 years. How can companies translate

the provisions in the GDPR into specific measures to handle children's data correctly and what can parents do to protect the privacy of their children? And what do children have to say on this?

<https://www.universiteitleiden.nl/en/news/2021/01/simone-van-der-hof-in-podcast-on-gdpr-and-childrens-rights>

Van Vollenhoven Lecture 2021. Following the Plantation: Law and Human Rights in Indonesia 1870-2020

On 20 May 2021, Tania Li, Professor of anthropology at the University of Toronto gave the annual Van Vollenhoven lecture.



Scholars working mainly in the Americas have argued that the emergence of plantations circa 1600 re-shaped the world order, embedding racialized modes of social, political and economic organization

that resonated far beyond plantation borders. They have dubbed this the “plantationocene.” Inspired by this line of inquiry and focusing on Indonesia, this lecture argues that from the 1870 Agrarian Law through the 1960 Land Law, the emergence of the New Order and the 2020 pro-investment Omnibus Law, plantations have been central to the formation of Indonesia's legal regimes. Plantations also entrench race-like social divides at the heart of the social order, and install political relations that are antithetical to human rights and enfranchised citizenship. Measures to protect customary

land rights, small scale farms and ordinary citizens struggle to make headway in this milieu.

The lecture was organised by the Van Vollenhoven Institute in collaboration with the Commission on Legal Pluralism and EPFR.

<https://www.universiteitleiden.nl/en/events/2021/05/van-vollenhoven-lecture-by-tania-li-20-may-2021>

Highlighted publications

eLaw publishes in Nature

27 May 2021



Researchers of eLaw, the Center for Law and Digital Technologies at Leiden University, published their research in Nature Machine Intelligence. The publication, written by Eduard Fosch-Villaronga, Pranav Khanna, Hadassah Drukarch, and Bart Custers, focuses on the legal and regulatory implications of surgery automation.

Entitled ‘*A human in the loop in surgery automation*’, the publication focuses on how the complex interplay between increasingly autonomous surgical robots, medical practitioners and support staff will soon complicate the understanding of how to allocate responsibility if something goes wrong. After mapping autonomy levels for surgery robots, it is explored how this affects the role of humans in highly autonomous robotic surgeries. Understanding the exact role of machines and humans in highly autonomous robotic surgeries is essential to map liability and avoid ascribing or extending responsibility to the surgical robot.

<https://www.universiteitleiden.nl/en/news/2021/05/elaw-publishes-in-nature>

Article on Affective Computing by Andreas Häuselmann published in IDPL

Affective Computing (AC and sometimes called ‘Emotional AI’) provides opportunities to automatically process emotional data. However, is EU data protection law fit for purpose when it is applied to such AC approaches?



In his article which has been published in the International Data Privacy Law journal from Oxford University Press, Andreas Häuselmann, external PhD candidate at eLaw - Center for Law and Digital Technologies, discusses the automated processing of emotional data based on AC

approaches in the context of EU data protection law.

Although AC approaches are already used in practice, the topic seems to be highly underrepresented in privacy and data protection law related research. Because emotional data is personal, sensitive, and intimate by nature, the question arises how such a new category of data suits into the framework of EU data protection law. The researcher argues that the latter is not necessarily fit for purpose when applied

to AC approaches. For example, he concludes that emotional data is currently not considered as sensitive from the legal point of view despite its sensitive nature. Furthermore, Andreas Häuselmann highlights that AC approaches are in tension with the transparency and accuracy principle and raise concerns when applied in the context of important decisions (e.g. recruitment, border controls).

<https://www.universiteitleiden.nl/en/news/2021/03/article-on-affective-computing-by-andreas-hauselmann-published-in-idpl>

Helena Vrabec's new book on Data subject rights

In a new book forthcoming with Oxford University Press, Dr Helena U Vrabec, guest researcher at eLaw and privacy lawyer at Palantir Technologies, explores the area of control rights under the GDPR.



Dr Helena U Vrabec

Having control over personal data is regarded as a fundamental right in the EU. Since the General Data Protection Regulation (GDPR) became enforceable May 2018, old rights were strengthened, and a range of new rights were introduced. How to navigate the changing landscape of data subject rights under the GDPR framework is the focal point of

this book. At the centre of this discussion are five key rights: the right to information, the right to access, the right to data

portability, the right to be forgotten, and the rights related to profiling (the right to object and the right not to be subject to automated decision-making). With a focus on how these fit into big data economies, this book gives practitioners, academics, students and activists the knowledge of how to use and understand the rights while also pointing out inefficiencies where data subject rights are concerned in a big data environment. As legal guidance slowly develops and still appears fragmented, this volume tackles the gaps and provides a thorough analysis of data subject rights under the new GDPR framework and their legal operation.

<https://www.universiteitleiden.nl/en/news/2021/04/helena-vrabecs-new-book-on-data-subject-rights>

Research report 'Interpretation and implementation of the Returns Directive'

The EU Returns Directive is an important instrument to humanely return third-country nationals without lawful residence to their country of origin. However, the return of third-country nationals remains problematic for a number of reasons.

The Europa Institute of Leiden University was asked by the Dutch Repatriation and Departure Service and commissioned by the Research and Documentation Centre of the Ministry of Justice and Security to investigate the implementation of the EU Returns Directive. The first research question is what the influence of the Returns Directive and the case law on the Directive has been on the return of third-country nationals and the use of immigration detention in the past decade. The second research question is what this influence has been in Belgium, Denmark, Germany and Norway.

Foreign nationals without lawful residence must return to their country of origin and should be issued a return decision. This can lead to different return trajectories. The foreign national can return independently with supervision, for instance with the use of return support by the International Organization for Migration. The foreign national can also return independently without supervision. In that case the domestic authorities often lose track of the foreign national and it is unsure whether the foreign national has actually returned or is still present in the territory of the host state. A third option is that the foreign national is forcibly removed. In the Netherlands and in the other states that have been investigated in this research project, there is a preference for independent return with supervision, as this is perceived to be less burdensome for both the foreign national and the domestic authorities.

<https://www.universiteitleiden.nl/en/news/2021/05/research-report-interpretation-and-implementation-of-the-returns-directive>

Advanced EIHRL LLM Candidates draft report For the UN Special Rapporteur on Freedom of Expression

Prof. Mark Leiser and a team of thirteen law students from Leiden University's Advanced LLM programmes in European and International Human Rights Law as well as in Law and Digital Technologies together drafted a report for the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.



Mark Leiser

The Adv. EIHRL LLM contributors were Niamh Coghlan, Carola Gioco, Lindsay McCosh, Flavia Mencarini, Melanie Moulder, Ona Lorda Roure and Udit Saha. Remarkably, the team only had one week, which fell within an exam period, to formulate the report.

The report's purpose is to inform the Special Rapporteur's annual thematic report presented to the Human Rights Council at its 47th session in June 2021. It mainly focuses on the challenges raised by disinformation and misinformation. It analyses the measures taken by different nations from Africa, Asia-Pacific, Europe and the Americas, as well as digital tech companies, and the impact of such measures on the freedom of expression. Finally, it presents specific recommendations for the Special Rapporteur on how to protect and promote the right to freedom of opinion and expression while simultaneously combatting disinformation.

<https://www.universiteitleiden.nl/en/news/2021/06/advanced-eihrl-llm-candidates-draft-report-for-the-un-special-rapporteur-on-freedom-of-expression>

Article on a century of codified Muslim family law in Egypt, published by Nadia Sonneveld



Sonneveld, Nadia. 2021. "Making Up the Balance: A Century of Muslim and Coptic Family Law Reform in Egypt." This article was published in *One Hundred Years of Family Law Reform in Parliament, in Court, and on Screen*, edited by Parolin, Gianluca. London: Abdou Filali-Ansary

Occasional Paper Series, 6-19.

<https://www.aku.edu/ismc/publications/Documents/AFAOccasionalPaperSeries-Issue6.pdf>

In 1920, when Egypt was still a British protectorate (1914–1922), a committee of religious and legal scholars introduced Egypt's first codified Muslim family law (Law No. 25/1920). The law was considered a landmark development, both in Egypt and the wider Muslim world. This and subsequent Egyptian family law reforms received much scholarly attention. In many studies, the predominant focus is on the position of women and how religious laws impact on their lives. Relatedly, scholars often ask whether the reforms lead to social change and gender equality. One hundred years of family law reforms looks like a good moment to reflect on these questions. I, however, propose to use the occasion to assess the biases in the field and advocate for a more holistic approach to the study of religion-based family law. By moving beyond the almost exclusive focus on Muslim women, and including in our analyses neglected groups, such as men, migrants, non-Muslims, and people with

physical and mental disabilities, we can make up for the fact that an important part of empirical reality has remained understudied. Comparing the development of a century of Muslim and Coptic-Christian family law reform in Egypt, this article aims at making such a contribution. The chapter was published in *One Hundred Years of Family Law Reform in Parliament, in Court, and on Screen*, edited by Parolin, Gianluca.

<https://www.aku.edu/ismc/publications/Documents/AFAOccasionalPaperSeries-Issue6.pdf>

Miscellaneous

Bart Schermer appointed as Professor of Privacy and Cybercrime

As of 1 November 2021, Bart Willem Schermer has been appointed as Professor of Privacy and Cybercrime at eLaw – Center for Law and Digital Technologies.



Bart Schermer

In his teaching and research, Schermer focuses on the topics of privacy and cybercrime, and more in particular on the intersection between these areas: the aspects related to privacy law in the investigation of crime and cybercrime. ‘What these two topics have in common is that they are subject to constant change due to rapid developments in digital technologies’, Schermer says. ‘Digital technologies like the internet, artificial intelligence and augmented reality, are changing how we interact, the balance of power and our view of the world. The normative and organising role of the law is of great importance in steering the changes in society arising from these new technologies in the right direction.’

New technologies have enabled new types of crime and investigative methods must respond to that. Methods such as

digital intrusion, the use of artificial intelligence and taking over dark markets are important in combating crime and cybercrime, but also raise questions about the protection of privacy. ‘Besides “classic” forms of cybercrime like hacking, phishing and DDos attacks, digital technologies also facilitate new harmful and undesirable behaviour – for example, virtual vandalism or deep fakes. The question is whether, and if so how, such behaviour needs to be made an offence.’

<https://www.universiteitleiden.nl/en/news/2021/11/bart-schermer-appointed-as-professor-of-privacy-and-cybercrime>

Researcher Fachrizal Afandi’s coronavirus year: ‘I spoke at over 30 webinars’



In mid-March 2020, the global coronavirus outbreak changed everything in the Netherlands. Staying at home as much as possible and the 1.5 metre rule became the standard. One year on, we reflect on the past year with four Leiden Law School ‘insiders’. What kind of year did they have? And what are their thoughts on the

future? This week: researcher Fachrizal Afandi.

Fachrizal works as a guest researcher at the Van Vollenhoven Institute for Law, Governance and Society (VVI). In January

2021, he obtained his PhD from the VVI and the Institute for Criminal Law and Criminology. His PhD research focused on Indonesian post-authoritarian public prosecutors and their role in promoting the rule of law. ‘Initially, I had planned to have a public defence in August 2020, but as a result of the lockdown I had to adjust this plan.’

From March until May 2020 was the hardest time. ‘I could not work at the office and had to stay at home with my family. My children had online schooling while my wife was also struggling to finish her manuscript.’ After the Dutch government eased the lockdown, Fachrizal could focus once again on his work. ‘The VVI secretariat helped me cope with this issue by arranging more opportunities for me to come and work at the faculty.’

Apart from these drawbacks, the pandemic also created more opportunities for connecting with other people throughout the world. ‘I could join and participate in many academic events. Since March 2020 up to March 2021, I have been invited to give a presentation in more than 30 webinars.’ Working at home eventually got better. ‘Before Covid, I felt uncomfortable working from home. I could only focus on my work while I was at the office. The situation during the pandemic has forced me to change my working habits. Although it was not easy, I was eventually able to work from home and complete my thesis.’

<https://www.universiteitleiden.nl/en/news/2021/03/researcher-fachrizal-afandis-coronavirus-year-i-spoke-at-over-30-webinars>

Geremek lecture

In September Prof. Rick Lawson, who holds the chair in European Human Rights Law at the Europa Institute, was elected vice-president of the Management Board of the EU Fundamental Rights Agency in Vienna.

In December he submitted a joint expert opinion on a sustainable and effective system of supervision of the intelligence and security services. The expert opinion, which was written at the request of the Ministry of the Interior, was co-authored by professors Paul Bovendeert (Nijmegen) and Heinrich Winter (Groningen). The request for the opinion was prompted notably by the fact that the European Court of Human Rights had issued two leading judgments on this issue in the summer of 2021.

Earlier, on 12 May, Rick Lawson hosted the bi-annual Geremek lecture. This year the lecture, entitled “The borders of the West”, was offered by Dr Ian Buruma. The lecture was followed by a panel discussion featuring the Polish Minister for European Affairs, Mr. Konrad Szymański, and Leiden



alumna Ms. Anita van den Ende, DG European Cooperation at the Dutch Ministry of Foreign Affairs.

As a follow-up to the event Dr Ian Buruma has written an article – in Dutch – based on his lecture. It has just been published in the weekly magazine De Groene Amsterdammer. You can find the full text of the article [here](https://www.universiteitleiden.nl/en/news/2021/05/geremek-lecture-published).

<https://www.universiteitleiden.nl/en/news/2021/05/geremek-lecture-published>

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