

Straniak Academy

for Democracy and Human Rights

1-14 September 2019

Ulcinj/Montenegro

Final Report

Dajana Bjelovuk, MA

Coordinator for the Straniak Academy

Table of Content

Introduction.....	3
Background and Goal of the Straniak Academy	4
The Straniak Academy Team	5
Partners and Donors of the Academy	6
Application Procedure and Selection of Participants.....	6
Lecturers and Tandem Teaching	8
Programme of the Academy	11
Roleplay	12
Exploring Montenegro.....	13
Final Exam	15
Closing Ceremony and Diplomas.....	16
Evaluation of the Academy	17
General Achievements and Impact of the Academy.....	18
Outlook to the Future and Special Thanks	19
Our Partners and Donors.....	21
Annex 1: Programme.....	22
Annex 2: Roleplay.....	28

Introduction

The Straniak Academy for Democracy and Human Rights (hereinafter the Academy) is an academic programme for advanced students and recent graduates from the Western Balkan region, Austria and other European countries who wish to deepen their knowledge and gain new insights into the field of human rights, democracy and the rule of law. The Academy offers European and international perspectives regarding the relevant topics and promotes a dialogue between students, professors and experts. The programme was initiated in 2013 and has taken place ever since (with an exception in 2017) for two weeks in one of the Western Balkan countries. The Academy is implemented by the *Ludwig Boltzmann Institute of Human Rights-Research Association (BIM-FV)* based in Vienna, in 2019 in cooperation with the *Bundeswehr University Munich*. Since its very beginning, the Academy is significantly financially supported by the *Hermann and Marianne Straniak Foundation (CH/A)*, and, in 2019, additionally by the *Austrian Federal Ministry for Europe, Integration and Foreign Affairs* and various organisations and law firms from Austria and Germany.

After six years of successful implementation, the Academy is already a well-known and recognised programme, which contributes to enhance mutual understanding and reconciliation and promotes European values among new generations. The 6th Straniak Academy for Democracy and Human Rights was organised from 1 to 14 September 2019, for the third time in the Hotel Palata Venezia in Ulcinj, Montenegro.

The purpose of the report at hand is to provide a detailed description of the Straniak Academy 2019, to share the impressions and outline future developments. The Report presents the background and goals of the Academy, the organising team, lecturers, students as well as partners and donors. Furthermore, the Report explains the application procedure and criteria for admission, provides a summary of the lectures and topics and outlines the highlights of this year, reflecting the Academy's overall achievements, results and impact on the Western Balkan region.



Ulcinj, Montenegro



Breakfast at Palata Venecia before the lecture



View from the Hotel in Ulcinj



View from the Hotel in Ulcinj

Background and Goal of the Straniak Academy

The idea to organise a summer school on democracy, rule of law and human rights came up during the visits of Professor *Hannes Tretter*, Associate Professor for Fundamental and Human Rights Law at the University of Vienna (now retired) and Co-Founder of the Ludwig Boltzmann Institute of Human Rights, in the course of a Twinning project in Montenegro and his guest lectures at the Faculty of Law in Podgorica. During conversations with Professor *Ivana Jelić*, former Reader for Public International Law, International Human Rights Law and Diplomatic and Consular Law at the Faculties of Law and Political Science in Podgorica and now Honourable Judge at the European Court for Human Rights in Strasbourg, the two experts recognised the importance for an academic programme in relation to human rights and the rule of law in the Western Balkan region. The signing of memoranda of understanding between the Straniak Foundation, the Ludwig Boltzmann Institute of Human Rights and the respective faculties in 2013 was the first step towards the establishment of the Academy.

The war and conflicts in the Western Balkan region in the 90ies created deep tensions and divisions between the different ethnic groups. The violent break-up of the former Yugoslavia not only created new state borders, but also deep wounds, mistrust and emotional barriers. The current political discourses reinforce fear, hatred and misunderstanding, which are reproduced and passed on to new generations who were born after those conflicts. During this time, whole societies were shaken and torn apart and underwent a tremendous stress and war trauma, which led to a deep social depression. It is not surprising that such experiences need time and efforts from different sides to find possibilities to understand, forgive, and find a way forward. However, even decades after the conflicts, considering that the tensions began in 1991 in Croatia, the region is still experiencing a political and economic backlog. On one side, the unwillingness of the political leaders to deal with the real problems of the citizens such as high unemployment rates, poverty and the widespread corruption and nepotism, is one of the main reasons for the younger generations to leave their countries. This leads to a brain drain of future intellectuals who look for a better live anywhere else, instead of being given the chance to build up their countries and create a better future in their home countries. On the other side, the manifold efforts, which were taken by the international community in the past two decades, did not bring along the expected results. The involvement of the international community was necessary after the conflicts. However, some interventions were and are still not efficient enough or well received and are heavily criticised by the citizens. In such complex environments, it is very difficult for young people to grow up and pursue their dreams. Young people need empowerment and a possibility to create their own future, free from manipulation by nationalistic discourses, violence and divisions.

Empowerment of young people is most of all possible through education and training, which is a powerful tool to deconstruct the current political narratives, understand the structures and mechanisms at the local, EU and international level as well as critically analyse existing issues and propose alternatives. Educating young people to become open-minded and engaged citizens who know the meaning of democracy and who are aware of the importance of the rule and law as well as their rights and responsibilities, is a precondition to create healthy societies, overcome past conflicts and to look towards a peaceful, free and democratic common future in the European Union. Consequently, the mission of the Straniak Academy is to promote empowerment through education.

In particular, the Academy pursues the following goals:

- (i) to promote knowledge on the most important mechanisms on the protection of human rights, to explain the concept of the rule of law and why it is crucial for healthy societies and to discuss democratic values, which are powerful tools against discrimination, segregation and suppression,
- (ii) to discuss complex issues by offering different perspectives through an inspiring teaching concept ('tandem teaching') and to create a bridge between academic education and practice by inviting representatives of the international community, state institutions and the civil society to provide an insight into their work,
- (iii) to offer a platform for discussion as well as further networking and exchange for young people coming from the region, Austria and other European countries, thus contributing to overcome barriers and mistrust.

The Academy contributes to strengthen a common European identity by fostering an open-minded dialogue of new generations, especially in regard to the diversity and plurality of different national, ethnic, religious and cultural identities in the Western Balkans. This is achieved by promoting respect, tolerance and equality, which are the main pillars of a peaceful and respectful co-living and mutual understanding.

The Straniak Academy Team

The Academy was organised by the this year's Straniak Academy team, namely Professor *Hannes Tretter*, Director of the Academy, Professor *Vasilka Sancin* and Professor *Christina Binder*, Deputy Directors, as well as by Ms. *Dajana Bjelovuk*, Coordinator of the Academy.



Prof. Hannes Tretter, Director
Professor for Fundamental and Human Rights Law, University of Vienna (ret.)
Co-Founder of the Ludwig Boltzmann Institute of Human Rights (BIM), Vienna



Prof. Vasilka Sancin, Deputy Director
Professor for International Law, Member of the UN Human Rights Committee, Head of the Department of International Law and Director of the Institute for International Law and International Relations at the Faculty of Law, University of Ljubljana



Prof. Christina Binder, Deputy Director
Professor for International Law and Human Rights at the Bundeswehr University in Munich, Germany, as well as at the Faculty of Law of the University of Vienna



Dajana Bjelovuk, MA, Coordinator
Project Coordinator and Researcher at the Ludwig Boltzmann Institute of Human Rights (BIM); Legal Assistant at Freshfields Bruckhaus Deringer, Vienna and former student of the Straniak Academy 2015

Partners and Donors of the Academy

As the name of the Academy already indicates, the main partner and facilitator of the Straniak Academy is the Hermann and Marianne Straniak Foundation, chaired by its President, the lawyer Mr. *Christoph Liebscher*. The foundation was established in 1974 in Sarnen (Switzerland), to support and promote, i.a., the goals, ideas and values of the European Convention on Human Rights. In 2015, the Straniak Foundation became a strategical partner of the Ludwig Boltzmann Institute of Human Rights. Together, they are making an important contribution to strengthen democracy, rule of law and human rights in various fields, in particular in Europe.

This year, the Straniak Academy experienced a change in the group of donors. Thanks to Professor *Christina Binder* and Professor *Hannes Tretter*, new collaborations between the Academy and the *Bundeswehr University Munich* as well as the *Austrian Federal Ministry for Europe, Integration and Foreign Affairs* could be established. We are very grateful to our new partners.

Other supporters and donors of the Straniak Academy 2019 are: *Schönherr Rechtsanwälte GmbH*, *Haslinger Nagele & Partner (RA Wolfgang Berger)*, *Reisebüro Columbus*, *Grilc Vouk Škof Rechtsanwälte* and *Eisenberger & Herzog Rechtsanwälte GmbH*.

Thank you all very much for making the Straniak Academy 2019 possible!

Application Procedure and Selection of Participants

The target group of the Straniak Academy are advanced students (3rd or 4th year of studies) as well as recent graduates who have a good academic background and some practical experience. In the past, we also received excellent applications from younger candidates (1st or 2nd year of studies) or more experienced PhD students. The Straniak Academy team occasionally decides to invite some of the younger or more advanced students to take part. This practice proved to be very enriching for the discussions during the lectures.

Participants from the Western Balkan region and Austria are the main target groups, but the Academy is also open to students coming from other EU Member States, the Caucasus region and occasionally other countries. This year, for example two students from the United Kingdom and Ukraine took part.

The application procedure started at the end of the summer semester 2019, from June until the end of July 2019. In order to apply, the students were asked to fill in the application form and to send it, together with their CV and a motivation letter, to the Straniak Academy team.

The call for applications was published on the website of the Ludwig Boltzmann Institute of Human Rights, the homepages of the Austrian Embassies to the Western Balkan countries and of academic and youth networks. The call was also published on different Internet and social media platforms (Facebook and LinkedIn), in order to reach a broad public. Due to the big success during the previous years, the last years' generations also spread the information about the Straniak Academy among their colleagues.

We received applications from Austria, Germany and the Western Balkan region, but also from other EU Member States and other countries. In total, 51 students applied. The number of applications were not as high as in previous years. This decline in applications was, most likely, due to the late release of the call for applications, a direct consequence of the late cancellation of a grander donor of the past.

The participants were selected according to the criteria as follows:

- Regional focus on Southeast European states and particularly the Western Balkan region
- Advancement of the studies: candidates approaching the finalisation of their studies and/or young graduates with an academic background in the field of democracy, human rights and rule of law
- Interdisciplinarity: different academic fields (law, international relations, international development, political science, social science etc.)
- Gender proportion
- Motivation of the candidates, their academic achievements, personal engagement and practical experiences in the respective fields

In order to facilitate students from the Western Balkan region to apply, the registration fee for those from non-EU Member States, namely Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia, was only 200 EUR, and the registration fee for participants from EU Member States and other countries was 400 EUR. The reason behind this is that the Straniak Academy intends to offer equal possibilities to all students regardless of their origin.

The Participants of the Straniak Academy 2019

M/F	Name	Country	University/Field of Studies
m	Aleksander Kvastek	Serbia	Law at the University of Belgrade
f	Alexandra Roja Ratzinger	Germany	Political Science and Psychology at the University of Vienna
f	Annika Neid	Germany	Multilingual Communication at the University of Applied Science Cologne
f	Arta Mucaj	Montenegrino	Economics at the University of Montenegro
f	Asja Borić	Bosnia & Herzegovina	Democracy and Human Rights at the University of Bologna
f	Ayse Salk	Turkey	Law at the Istanbul Sehir University
m	Bruno Cović	Croatia	Law at the University of Split and University of Zagreb
f	Clara Zimmermann	Austria	Law at the University of Vienna
f	Enikő Illes	Hungary	Law at the University of Vienna
f	Hristina Crenn	Macedonia	Law/History at the University of Sorbonne
f	Iryna Khomiak	Ukraine	MA in Human Rights at Friedrich-Alexander University in Erlangen-Nuremberg, BA and MA in Philology
f	Ksenija Dzipković	Serbia	Law at the University of Belgrade
f	Lena-Luisa Beese	Germany	Law at the University of Salzburg
f	Louise Pichler	Austria	Law at the University of Vienna and International Law at Universidad Complutense de Madrid
f	Marlies Desiree Soyka	Austria	Law at the University of Vienna

m	Matthew Shaikh	United Kingdom	Socio-Ecological Economics and Policy at WU Vienna; Social Sciences at University of London; Physics at the University of Manchester
m	Milos Nesić	Serbia	Law at the University of Belgrade
f	Natalie Bischof	Germany	Social Work as a Human Rights Profession at the Alice Salomon University Berlin
f	Nika Bobek	Slovenia	Law at the University of Ljubljana
m	Saman Kororian	Austria	Law at the University of Vienna
m	Sebastian Kuclar Stiković	Slovenia	Law at the University of Ljubljana
f	Stephanie Roth	Austria	Law at the University of Vienna
f	Tina Fokter	Slovenia	Law at the University of Ljubljana and University of Vienna

In advance of the Academy, the participants got in touch with each other via social networks to discuss useful organisational matters and travel arrangements. A “Straniak Academy 2019” group was created on Facebook and WhatsApp, which was used actively during the Academy. The participants are using social media to stay in touch with each other also in future in order to keep in touch, to upload photos and to exchange interesting information and news. Thus, the students are creating networks, which is also a goal and achievement of the Academy.

Lecturers and Tandem Teaching

The didactic concept of the Academy, ‘tandem teaching’, proves to be very successful and will be continued in the future. Tandem teaching means that two lecturers – one from Austria, Germany or another EU Member State and one from the Western Balkan region – prepare and hold lectures together. This means that the lecturers have to get in touch with each other in advance of the Academy and to prepare their lectures jointly. This particular way of teaching brings together lecturers from different countries and academic backgrounds and encourages the exchange of different didactic approaches and views. We believe that due to this approach, the students of the Academy have the privilege to get an insight into different perspectives, which broadens their horizon and encourages them to analyse a topic from different angles.

The lecturers of the Straniak Academy are high-ranking professors and experts in the field. This year, twenty professors and experts from Austria, Canada, Germany, Montenegro, Serbia and Slovenia taught at the Academy. While some of the lecturers have been involved in the Academy from the beginning or in recent years, some participated for the first time this year.

Unfortunately, Professor *Hannes Tretter* was not able to attend this year’s Academy due to private and professional reasons but is looking forward to welcome again lecturers and students at the Straniak Academy 2020. This year, it was a pleasure to have the Academy led by its two female Deputy Directors:

Professor *Christina Binder* from the Bundeswehr University Munich and University of Vienna welcomed the students and led the Academy the first ten days while Professor *Vasilka Sancin* from the University of Ljubljana and Member of the UN Human Rights Committee led the Academy the second week and handed over the diploma to the students on the last day. Both professors are special partners of the Academy since its very beginning and have always provided valuable support for the Academy.

Further, we had the pleasure to welcome *Nina Radović*, former Coordinator of the last six very successful Academies, as lecturer at this year's Academy. Ms. Radović shared her expertise on human rights in general and on the civil society movement in Bosnia & Herzegovina with the students. We would like to thank Ms. Radović for being a strongly dedicated and very reliable coordinator in the past and for being a kind-hearted, patient and professional advisor for the preparations of this year's Academy.

Additionally, we also had the pleasure to welcome this year, among the others, new lecturers: *Maria Berger*, former Minister of Justice of the Republic of Austria and former Austrian Judge at the Court of Justice of the European Union; *Daniel Erasmus Khan*, Professor of European and International Law at the Bundeswehr University Munich; *Marcia V. J. Kran*, Director of the Research and Right to Development Division at the UN Office of the High Commissioner for Human Rights (OHCHR) in Geneva; *Bojan Bozović*, Director of the Legal Department at the Centre for Monitoring and Research; *Blanka Jamnisek*, Ambassador and serves currently as the Slovenian National Focal Point for the Responsibility to Protect and as the Deputy Head of the Slovenian Delegation to the International Holocaust Remembrance Alliance (IHRA); *Donald Riznik*, Senior Researcher at the Bundeswehr University Munich; *Blazen Maleski*, Researcher at Reactor – Research in Action, a think tank based in Skopje; *Julia Haas*, Legal Officer at the office of the OSCE Representative on Freedom of the Media, *Agnes Taibl*, *Claudia Hüttner*, *Margit Ammer* and *Andreas Sauermoser*, Project Managers and Researchers at the Ludwig Boltzmann Institute of Human Rights in Vienna.

All lecturers held their lessons with great enthusiasm and shared their knowledge, expertise and experience with the students. They motivated the students and sparked their interest and passion for their respective subjects and initiated interesting discussions.

A list and short bio of the lecturers may be found at the end of this report.



Deputy Director, Professor Christina Binder teaching leading an evening discussion



Blazen Maleski and Nina Radović



Above: Marcia V. J. Kran reading human rights and the environment climate change and pollution

Left: Discussion with Mr. Aleksa Ivanović, Professor Daniel Erasmus Khan and Professor Vasilka Sancin held outside the seminar room in order to also

enjoy the stunning view and beautiful weather in Ulcinj



Our enthusiastic lecturers Professor Vasilka Sancin, Ambassador Blanka Jamnisek, Professor Khan, Ms. Agnes Taibl and Ms. Claudia Hüttner as well as our happy and ambitious students.



Programme of the Academy

The programme of the Academy distinguishes itself from other summer schools, especially by its tandem-teaching approach and the commitment to offer an intense inter-active academic programme, ensuring high-level academic education in the fields of democracy, human rights and rule of law.

The topics were grouped into general and special thematic fields, allowing a systematic approach and ensuring a gradual advancement in understanding the relation between the different topics and developments, starting from philosophic ideas and concepts on democracy and human rights, providing an overview of the most important international and European instruments and organisations, to specific human rights related issues and current topics.

Part 1: Introduction

- The coherence between democracy, rule of law, checks and balances and human rights
- Human dignity as a foundational principle of human rights

Part 2: United Nations

- The Universal Declaration of Human Rights
- Peace and justice: transitional justice and universal jurisdiction
- Individual criminal responsibility and international criminal tribunals
- Responsibility to Protect

Part 3: European Union

- The fundamental rights framework of the EU: Treaty of Lisbon, EU Charter of Fundamental Rights (CFR) and the role of the EU Fundamental Human rights Agency (FRA)
- The Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR), the accession of the EU to the European Convention on Human Rights (ECHR)

Part 4: Council of Europe

- Introduction to the human rights regime of the Council of Europe, including the European Convention on Human Rights and the European Court of Human Rights

Part 5: States in transition

- States in transition and their accession to the European Union - Strategy and programmes of the EU
- States in transition and their accession to the European Union – the contribution of the OSCE and the CoE
- Role play: Fight against corruption

Part 6: Selected human rights issues

- Combating trafficking in human beings
- Freedom of expression, combating of hate speech, independence and pluralism of the media as preconditions for a living democracy
- Access to information and protection of personal data
- Independence and impartiality of the judiciary, the right to personal liberty and security, the right to a fair trial and effective remedies
- Human rights and the environment, climate change and economic development goals

- The EU acquis on asylum law and the refugee drama
- Human rights and corporate social responsibility
- The principles of equality and non-discrimination
- Protection of national minorities

The detailed programme of the Straniak Academy 2019 is included in Annex I to this Report.

Roleplay

In the last four Academies, roleplays have become an integral part of the programme. Roleplays open new ways of learning and teaching by active participation and involvement of every student. The topic of the role play is chosen by the Academy's team, according to the current political developments and relevant topics. The roleplay offers the possibility to put theory into practice and experience, what it means to work on joint solutions by using diplomatic skills and knowledge acquired during the lectures. In the previous years the topics of the roleplays were: finding a friendly settlement between Ukraine and Russia for the Donbas (2014), negotiations to stop the terror and crimes against humanity committed by the ISIS (2015), the refugee drama (2016) and fight against corruption in sports (2018).

This year, the topic of the roleplay was the case of Turkey: 'Arbitrary Detention & Crash of the State of Law. Why the passivity of the European Court of Human Rights and of European States?' After the failed coup attempt of 15 July 2016 against state institutions, including the government and President Erdoğan, Turkey's parliament approved on 21 July a bill declaring a state of emergency for three months and informed the Secretary General of the Council of Europe of a partial derogation from its obligations according to the European Convention of Human Rights (ECHR), which is possible 'in time of war or other public emergency threatening the life of the nation [...] to the extent strictly required by the exigencies of the situation' (article 15 ECHR). Based on various emergency decrees of the President, so far more than hundred thousand judges, prosecutors, civil servants, lawyers, academics, and journalists have been released and ten-thousands imprisoned because being 'terrorists' or spreading or promoting 'terrorist propaganda' without having access to justice, in particular the guarantees of a fair trial. The consequences of the promulgation of the state of emergency are that several rights of the ECHR have been derogated.

The roleplay was prepared by Professor *Hannes Tretter* and *Andreas Sauer Moser*; and was supervised by Professor *Christina Binder*, Professor *Vasilka Sancin*, Professor *Daniel-Erasmus Khan* and Professor *Donald Riznik*. Thank you for your preparation and supervision!

The guidelines followed the usual standards and rules applied during the Vienna International Model United Nations (VIMUN) 2019 which were simplified for the purposes of the roleplay during the Straniak Academy.



It seems like our students are enjoying their role as judges.

Exploring Montenegro

Since the first Straniak Academy, we have organised excursions at the weekends in order to explore the landscape and cultural heritage of the country in which the Straniak Academy would take place. This year, the excursion was organised by the Academy's Coordinator, *Dajana Bjelovuk* in cooperation with the wonderful reception of the Hotel Palata Venezia. We visited Cetinje, Njeguše and the Venetian towns Kotor and finally, Budva, the most popular touristic destination in Montenegro. The excursion was led by a great local tourist guide who gave us an excellent and very interesting insight into the history and culture of Montenegro.

After a bus ride to Cetinje where we enjoyed the very delicious and typical ham and cheese in a traditional Montenegrin restaurant, we continued our trip to Njeguše. During our bus ride, we came across a ZIP line and our tour guide was joking whether we should take a break there to have some fun. Obviously, she was not aware that we have amazing lecturers who screamed immediately yes.

The ZIP line: *Julia Haas* and *Masa Ković Dine*, our brave lecturers were the first ones to try the ZIP line and our students followed them.



ZIP Line: Ready, steady, go!



After the visit to Njeguše, the trip took us to the picturesque Venetian town of Kotor, driving all way down the adventurous, very narrow road with twenty-five serpentines – built during the rule of the Habsburgs. Despite the adventurous ride, the students had an unforgettable experience and enjoyed the amazing view over the Bay of Kotor, which is surrounded by mountains on one side and the Adriatic See on the other, thus making the Bay of Kotor a special part of this region and its natural and historic importance protected by UNESCO.

In Kotor, we had enough time to rest and walk around with our wonderful tour guide who gave us a very interesting inside into the history of the town. Kotor is one of the most beautiful towns in Montenegro, surrounded by fortifications built during the Venetian period. The centre of Kotor is known for its narrow streets which lead to wonderful squares and precious palaces, which were once inhabited by noble families. In its rich past the city experienced numerous occupations and cultural influences from different conquerors – the Bulgarian Empire, the Serbian Empire, the Ottomans, the Venetians, the Habsburgs etc. The rich historic and cultural influences are visible at each corner.

The adventure finally led us to Budva, where we had the possibility to explore the old Venetian town, or simply to enjoy the sunset while having a drink in one of the numerous little bars and cafes.



The Coordinator Dajana Bjelovuk and the students posing for a picture at the excursion.

Final Exam

The Straniak Academy is a high-quality academic programme. Therefore, the students must take an exam in order to receive a diploma. The exam takes place on the last day of the Academy.

The exam consists of questions referring to the topics presented and discussed during the lectures. In order to prepare the exam, the lecturers provided multiple choice or short open questions on their topics, which were sent to the Straniak Academy team. This year, Professor *Vasilka Sancin* and *Dajana Bjelovuk* organised the exam.

In particular, attention was given to in-depth understanding of the contents, the reflection and interlinkages between the theoretical concepts, international human rights mechanisms and current topics. Consequently, the questions required well-elaborated answers and examples. In addition to the quality of the answers, the students received additional points for their active participation during the lectures.

After successful completion of the programme, the participants have the possibility to get ECTS points according to the rules and procedures of their respective home faculties and universities. The Faculty of Social Sciences in Vienna and the Law Faculty in Linz allocated eleven (11) ECTS for the Straniak Academy in the past, while the Law Faculty in Vienna approved seven (7) ECTS. Even though the rules and procedures of the respective faculties and universities might differ regarding the number of ECTS, the Straniak Academy should be recognised by all faculties and universities given its academic character.

Although our students were studying hard for the final exam, they did not lose their smile.



Brilliant minds taking the final exam:



Closing Ceremony and Diplomas

The exam took place in the morning, so that the afternoon was free for enjoying the seaside. The students had some time to relax after the exam and an intense two-week programme. In the evening, the Straniak Academy team and its students had a delicious dinner at the wonderful Restaurant “Teuta”, where everyone danced to a live band and enjoyed the view over the city and the harbour.

On the following day, Professor *Vasilka Sancin* handed over the diplomas to the students, and we celebrated the special moment. The results of the exam were very positive. All of the participants achieved positive grades, which proved that they were very interested in the topics and eager to acquire new knowledge.

This year, we had one outstanding student: *Enikő Illes* from Hungary, law student at the University of Vienna achieved all points in the exam.

Excellent results were also achieved by *Clara Zimmermann* from Austria, law student at the University of Vienna as well as by *Tina Fokter* from Slovenia, law student at the University of Ljubljana.

Congratulations!



Evaluation of the Academy

The Straniak Academy team did its best to make the Academy a successful and pleasant experience for all, students as well as lecturers. Nevertheless, in order to be able to respond to suggestions for improvement, the participants were asked to share their opinion and evaluate the Straniak Academy by filling in an anonymous evaluation form, which was distributed at the beginning of the Academy. The regular exchange of opinions and feedback is of utmost importance for the Straniak Academy in order to be able to respond to suggestions, criticism and individual requests. In the questionnaire, students had the possibility to evaluate each topic and lecturer on a scale from 1 to 5 and to include additional comments. The questionnaire included also general questions about the organisation and the structure of the programme.

In the following, the most frequent suggestions mentioned in the questionnaire are summarised. The majority of the students was very satisfied with the programme and the didactic methods. The holistic approach was very well received, as well as the tandem teaching. Most of the students underlined that the Academy was a great opportunity to gain new academic knowledge, to learn from experts and appreciated the committed work of the Straniak Academy team and all the lecturers very much.

However, most of the students suggested more free time as the two-week programme is very intense, and it feels like an information overload in such a short period without a proper period in order to process the new information.

Considering the lectures and content, many students pointed out that the role-play was very well received. However, some also pointed out that the preparations were too exhausting and that there was too much reading material. One might say it is intentionally, as the students learn how to write a resolution and especially, they learn how difficult it is to find a joint agreement.

Some students felt that certain power point presentations were too much packed. Furthermore, some students wrote that the material should be sent to the participants before the start of the Academy. Interactive formats were very well received, also holding the lectures outside the seminar room like during the evening discussions.

Even though the results of the final exam were very positive, some students were not happy about the way the exam was organised, mostly because they did not know what to expect. For some students the test was not easy, considering the fact that not all participants had a legal background. This however was taken into consideration during the corrections. According to some students, it was very hard or even impossible to study after the whole day of new information. Therefore, it was suggested to have a day off for studying before the exam.

Very well received was the low hierarchy between the lecturers and the students, the openness of the lecturers to get to know the students better and to engage with them in discussions. Also spending the free time together was very well received, in particular the excursion and the farewell dinner.

The Straniak Academy team would like to thank all participants for sharing their opinion with us. We will consider the suggestions for the future!

General Achievements and Impact of the Academy

One of the main goals of the Academy is to encourage young people to promote democracy, human rights and the rule of law in their countries. Especially in the Western Balkan region which is still experiencing a transformation process regarding the former political, economic and ideological regimes, the task to promote democracy by educating and encouraging young people seems more important than ever.

The Straniak Academy is going to continue to pursue this goal. In 2019, the overall objectives of the Straniak Academy, namely to promote academic education on democracy, human rights and rule of law and to raise awareness about the importance of these topics was fully met. The special format of the Academy – the combination of theory and practical experience, the interdisciplinary and interactive teaching methods and the principle of ‘tandem teaching’ – contributed to achieve these goals. The fact that many students from different countries from the Western Balkan region, Austria, Germany and other EU Member States had the possibility to meet and get to know each other closer, and to work intensively together during these two weeks, contributed to overcome deeply rooted prejudices and stereotypes. The participation in a joint programme encourages mutual understanding, which is a precondition for a brighter future of the Western Balkans.

It is also important to mention that the Straniak Academy strengthens the cooperation between the Ludwig Boltzmann Institute of Human Rights, the Faculty of Social Sciences and Public Affairs of the Bundeswehr University Munich, the University of Ljubljana and other respective Faculties and Universities in the Western Balkan region. Inviting lecturers from different countries offers the possibility to meet new colleagues, which is also beneficial concerning future cooperation activities, guest lectures and interexchange programmes for students and young graduates from the region, Austria and other countries.

Outlook to the Future and Special Thanks

The next Academy will be led again by the complete Straniak Academy team. Further, we plan to place the future Academy again at the wonderful Hotel Palata Venezia with its lovely staff, in beautiful Ulcinj, Montenegro.

A significant novelty could be a cooperation with the South East European Law School Network SEELS in the future. A Memorandum of Understanding was already signed between the Ludwig Boltzmann Institute of Human Rights and SEELS to promote the cooperation and advancement of academic and educational exchange and research activities. We are looking forward to new cooperation possibilities!

Finally, at the end of this Report, we would like to express our thanks to all cooperation partners who contributed to make the Straniak Academy 2019 possible:

- our partners and supporters, especially Mr. *Christoph Liebscher*, President of the Straniak Foundation,
- our Deputy Directors, Professor *Vasilka Sancin* and Professor *Christina Binder*,
- *Nina Radović* for her kind and helpful consultancy during the preparations of the Academy,
- the *Bundeswehr University Munich*,
- the *Austrian Federal Ministry for Europe, Integration and Foreign Affairs*, especially Ambassador *Teresa Indjein*, Head of the Section Cultural External Relations, and Ambassador *Martin Pammer*, former Austrian Ambassador to Montenegro and Bosnia and Hercegovina,
- the *Faculty of Law of the University of Ljubljana*,
- our lecturers who shared their expertise and experience with great passion and enthusiasm,
- our students who showed great interest and desire to deepen their knowledge and promote the idea and values of democracy, human rights and the rule of law and who actively participated and asked important questions during the Academy, and,
- last but not least, our further financial partners and sponsors.

THANK YOU VERY MUCH!

IT WAS A PLEASURE TO WORK WITH YOU!

WE ARE LOOKING FORWARD TO THE STRANIAK ACADEMY 2020!



Our Partners and Donors

Ludwig Boltzmann Institute
of Human Rights
Research Association



 Federal Ministry
Republic of Austria
Europe, Integration
and Foreign Affairs



RA Dr. Wolfgang Berger



Annex 1: Programme

Straniak Academy for Democracy and Human Rights

1 to 14 September 2019
Ulcinj, Montenegro

Programme

Sunday, 1st September

18:00-19:30 Welcome drink

Welcome by the leading team of the Straniak Academy

- *Christina Binder*, Co-Deputy Director, Straniak Academy for Democracy and Human Rights
- *Dajana Bjelovuk*, Coordinator, Straniak Academy for Democracy and Human Rights

Introduction of students and organisational questions

19:30 Welcome addresses and reception

- *Ute Friessner*, Consul, Deputy Head of Mission, Austrian Embassy Podgorica
- *Cazim Resulbegović*, Hotel Palata Venezia, Ulcinj

Part 1: Introduction

Monday, 2nd September

09:30-11:00 Coherence between democracy, rule of law, checks & balances and human rights. What are the most prevalent challenges in Western Balkan States in that regard?
Lecturers: *Christina Binder* und *Nina Radović*

11:00-11:30 Break

11:30-13:00 Human dignity as foundational principle of human rights
Lecturers: *Christina Binder* und *Nina Radović*

13:00-15:00 Lunch & beach

15:00-17:00 Universal Declaration of Human Rights, and the development, actual status and challenges of the UN Human rights protection system
Lecturer: *Christina Binder*

17:00-17.30 Break

17:30-19:30 Evening lecture and discussion: Bosnia and Herzegovina – lost in transition?
North Macedonia – on the right way?
Lecturers: *Nina Radović* and *Blazen Maleski*

Tuesday, 3th September

Part 2: Council of Europe (CoE)

09:30-11:00 Introduction into the human rights regime of the Council of Europe, in particular the European Convention on Human Rights (ECHR)
Lecturers: *Christina Binder* und *Andreas Sauer Moser*

11:00-11:30 Break

11:30-13:00 European Court of Human Rights (ECtHR) and the development of its case-law
Lecturers: *Christina Binder* und *Andreas Sauer Moser*

13:00-15:00 Lunch & beach

15:00-16:00 European Social Charter
Lecturer: *Christina Binder*

16:00-16:30 Break

16:30-18:00 Preparation of the role play “The case of Turkey” (see Monday, 9th)
Lecturers: *Christina Binder*, *Andreas Sauer Moser* and *Dajana Bjelovuk*

Part 3: European Union (EU)

Wednesday, 4th September

09:30-11:00 Judicial System of the EU and the Court of Justice of the EU (CJEU)
Lecturers: *Maria Berger*

11:00-11:30 Break

11:30-13:00 Charter of Fundamental Rights (CFR), the European Convention of Human Rights (ECHR), and the respective jurisprudence of the Court of Justice of the EU (CJEU)
Lecturer: *Maria Berger*

13:00-15:00 Lunch & beach

15:00-16:30 EU Enlargement and Neighbourhood Policy (ENP) – strategies and programmes
Lecturers: *Claudia Hüttner* and *Agnes Taibl*

16.30-17.00 Break

17:00-18:30 “Twinning”: A format to strengthen human rights and the rule of law in EU candidate states
Lecturers: *Claudia Hüttner* and *Agnes Taibl*

Thursday, 5th September

Part 4: Unites Nations – peace and justice

09:00-11:00 Individual criminal responsibility and international criminal tribunals
Lecturers: *Andreas Sauer Moser* and *Donald Riznik*

11:00-11:30 Break

11:30-13:00 Transitional justice and universal jurisdiction
Lecturers: *Christina Binder* and *Donald Riznik*

13:00-15:00 Lunch & beach

Part 5: Organization for Security and Cooperation in Europe (OSCE)

15:00-17:00 Role of the OSCE during the Cold War and its contribution to strengthen democracy, rule of law and human rights in the time beyond
Lecturer: *Julia Haas*

17:00-17:30 Break

17:30-19:30 Evening lecture: Is Turkey ripe to accede to the EU, does its policy and law match the accession criteria of the EU?
Lecturer: *Daniel-Erasmus Khan*

Friday, 6th September

09:00-11:00 Freedom of expression & combating of hate speech, independence & pluralism of the media as preconditions for a living democracy
Lecturers: *Julia Haas* and *Maša Kovič Dine*

11:00-11.30 Break

11:30-13:00 Combating corruption in states of transition
Lecturers: *Bojan Božović* and *Maša Kovič Dine*

13:00-14:30 Lunch

14:30-16:30 Independence and impartiality of the judiciary, the right to personal liberty and security & the rights to a fair trial and effective remedies
Lecturers: *Ivana Krstić* and *Donald Riznik*

16.30-17:00 Break

17:00-19:00 Prohibition of torture and inhuman and degrading treatment
Lecturers: *Ivana Krstić* and *Christina Binder*

Saturday, 7th September, and Sunday, 8th September

Excursion "Highlights of Montenegro" (Cetinje, Njeguši, Kotor, Budva)

Part 6: Selected human rights issues

Monday, 9th September

09:00-13:00 Role play "The case of Turkey"
State application against Turkey before the ECtHR because of gross and systematic violations of the ECHR attended on the emergency law degrees 2015
First part: Preparation of the state application and deliberations of the Court
Advisors: *Christina Binder*, *Vasilka Sancin*, *Daniel-Erasmus Khan* and *Donald Riznik*

13:00-15:00 Lunch & beach

15:00-18:00 Role play "The case of Turkey"
Second part: Hearing before the ECtHR
Advisors: *Christina Binder*, *Vasilka Sancin*, *Daniel-Erasmus Khan* and *Donald Riznik*

Tuesday, 10th September

- 09:00-10:30 Combating trafficking in human beings, in particular in children
Lecturer: *Vasilka Sancin*
- 10:30-11:00 Break
- 11:00-13:00 EU *acquis* on asylum law and the refugee drama
Lecturers: *Daniel-Erasmus Khan* and *Margit Ammer*
- 13:00-15:00 Lunch & Beach
- 15:00-16:30 Access to information and protection of personal data
Lecturers: *Aleksa Ivanović* and *Daniel-Erasmus Khan*
- 16:30-17:00 Break
- 17:30-18:30 Evening discussion: Human rights' threats and challenges of the digital world
Discussants: *Vasilka Sancin*, *Marcia V. J. Kran*, *Daniel-Erasmus Khan*, *Aleksa Ivanović*

Wednesday, 11th September

- 09:30-11:00 Human rights and the environment, climate change & garbage in the Mediterranean
Lecturers: *Marcia V. J. Kran* and *Margit Ammer*
- 11:00-11:30 Break
- 11:30-13:00 Responsibility to protect (R2P)
Lecturers: *Vasilka Sancin* and *Blanka Jamnišek*
- 13:00-15:00 Lunch & beach
- 15:00-16:00 Corporate social responsibility (CSR)
Lecturers: *Vasilka Sancin* and *Blanka Jamnišek*
- 16:00 Time for studying

Thursday, 12th September

- 09:00-11:00 Principles of equality and non-discrimination (including minority rights)
Lecturers: *Vasilka Sancin* and *Dieter Schindlauer*
- 11:00-11:30 Break
- 11:30-13:00 LGBTIQ rights
Lecturers: *Marcia V. J. Kran* and *Dieter Schindlauer*
- 13:00-15:00 Lunch & Beach
- 15:00-18:00 Time for studying
- 18:00-19:30 Role play "The case of Turkey"
Third part: Pronouncement of the judgment of the ECtHR
Commentator: *Vasilka Sancin*

Part 7: Closing of the Academy

Friday, 13th September

- 09:00-13:00 Time for studying
- 13:00-14:00 Lunch

14:00-16:00 Multiple-choice test

20:00 Farewell addresses, reception and party

Saturday, 14th September

10:00 Handing-over certificates to the students by:

- *Vasilka Sancin*, Co-Deputy Director
 - *Dajana Bjelovuk*, Coordinator
-

The lecturers

Margit Ammer is Senior Researcher of the Ludwig Boltzmann Institute of Human Rights (BIM).

Maria Berger is former Minister of Justice of the Republic of Austria and former Austrian Judge at the Court of Justice of the European Union.

Christina Binder is Professor for International Law and Human Rights at the University of the Bundeswehr in Munich, Germany, as well as at the Faculty of Law of the University of Vienna and Co-Deputy Director of the Straniak Academy for Democracy and Human Rights.

Julia Haas is legal officer at the office of the OSCE Representative on Freedom of the Media, Vienna.

Aleksa Ivanović is member of the Council at the Agency for Personal Data Protection in Montenegro.

Blanka Jamnišek is ambassador and serves currently as the Slovenian National Focal Point for the Responsibility to Protect and as the Deputy Head of the Slovenian Delegation to the International Holocaust Remembrance Alliance (IHRA). From 2011-2015, she served as the Slovenian Permanent Representative to the UN, the OSCE, and other international organizations in Vienna, Austria.

Claudia Hüttner is researcher at BIM.

Daniel-Erasmus Khan is Professor for Public Law, European and International Law at the Bundeswehr University Munich, Germany.

Maša Kovič Dine is Assistant Professor of International Law at the University of Ljubljana.

Blazen Maleski, is researcher at Reactor-Research in Action, a think-tank based in Skopje, North Macedonia.

Marcia V. J. Kran is Director of the Research and Right to Development Division at the UN Office of the High Commissioner for Human Rights (OHCHR) in Geneva; former Head of Policy and Program, UNDP Regional Centre for Asia and the Pacific in Bangkok; and Democratic Governance Practice Leader at UNDP's Bratislava-based Regional Centre for Europe and the Commonwealth of Independent States.

Nina Radović is a former researcher at the Ludwig Boltzmann Institute of Human Rights (BIM) and former coordinator of the Straniak Academy, she is Assistant to the General Director at Médecins Sans Frontières in Vienna.

Donald Riznik is Senior Assistant Professor at the Institute of Public and International Law of the Bundeswehr University Munich, Germany.

Vasilka Sancin is Professor for International Law, Member of the UN Human Rights Committee, Head of the Department of International Law and Director of the Institute for International Law and International Relations at the Faculty of Law, University of Ljubljana and Co-Deputy Director of the Straniak Academy for Democracy and Human Rights.

Andreas Sauer Moser is researcher at the BIM.

Dieter Schindlauer, Head of NGO ZARA, former researcher at the BIM.

Agnes Taibl is researcher at the BIM.

Ivana Krstić is Associate Professor at the Faculty of Law at the University of Belgrade, Serbia.

Dieter Hans Schindlauer is Director/CEO at ZARA – Civil-courage and Anti-Racism Work, Senior Consultant for Human Rights and former researcher at BIM.

Bojan Bozović is Director of the Legal Department at the Centre for Monitoring and Research (CeMI) and an active public speaker on human rights and international law.

Statement of the Defenders

Non-violation of the right to a fair trial

The Republic of Turkey strongly declines the accusations that it had violated the right to a fair trial (Article 6 ECHR). Firstly, there was a legal basis for measures that have been taken: three Decrees Law (Decree with force of law No. 668 – 27 July 2016, No. 669 – 31 JULY 2016 and Decree Law No.: KHK/667), the Article 15 of the Constitution of the Republic of Turkey and Article 15 of the European Convention of Human Rights. Both articles predict that (human) rights can be restricted or suspended during the state of emergency. Secondly, the limitations pursue a legitimate aim such as the protection of nation security and maintenance of public order. Thirdly, the limitations are proportionate. If you take the total number of judges and prosecutors that were suspended, dismissed and/or detained (1/5 of the total number of judges and prosecutors were suspended and 3390 subsequently dismissed, 2386 had been detained) and compare that to number of citizens in the Republic of Turkey today, the number of judges and prosecutors remaining in position is still higher and can absolutely guarantee the right of a fair trial, therefore the functions of courts in Turkey was in no way impaired. The existence and effectiveness of procedural safeguards are still guaranteed. To add, there were reasonable suspicions and even evidence that those judges and prosecutors are connected to the Gulen Movement, which is in fact a dangerous terrorist group, and pose a threat to independence of the national judiciary and national security. Consequently, it was necessary for Turkey to limit this right, which ultimately is not even an absolute right. Without this measures Turkey could not fulfil its obligation as a state responsible for its citizens.

Regarding the arrests of lawyers

The Republic of Turkey claims that does arrest were in no way arbitrary and discriminatory. Enough evidence was obtained to reasonably suspect that all those lawyers were connected or collaborating with the Gulen Movement, arrests were ordered by public prosecutors and standards of proof were meet in every stage of the investigations and arrests. The State of Turkey can assure that appropriate legal counselling is and will continue to be provided to them (arrested lawyers) and that they will face fair trial by competent and impartial judges.

Re-battle

We have to point out that many journalists, including very critical ones, are not imprisoned and Consider this accusation strongly offensive.

We strongly believe that Turkey has an effective system of judicial review. We would like to emphasize that what constitutes a fair trial cannot be subject of a single unvarying rule but must depend on circumstances of the particular case. Primary concern must be to evaluate the overall fairness, which we strongly believe still governs the national judiciary system. In the end we would like to underline that Article 6 of ECHR should not be applied in such a manner as to put disproportionate difficulties in the way of the police authorities and taking effective measures to counter terrorism or other serious crimes in discharge of their duty under Article 2, 3 and 5 of the Convention to protection the right to life and the right to bodily security of members of the public, if public interest and security is concerned (*Ibrahim and others vs. United Kingdom*).

Pronouncement of the Judgment of the the ECtHR

Pleadings Respondent State (Turkey)

I. Inadmissibility

The rule of Article 35 ECHR is that domestic remedies have to be exhausted by applicants. The defendants did not bring any arguments, which would justify why an exception to the rules of this court should be made. If we take into consideration, that an individual, lodging a complaint to the honourable court, must exhaust local remedies, that an individual whose rights have apparently been violated by a member state of the Council of Europe, needs to exhaust local local remedies, why should the criteria be different in the situation of a state complaint?

The burden of proof lies on the defendants.

II. State of emergency

1. Threats to the Republic of Turkey from FETO

Within my speech I will argue that the activities of the religious group named “Fethullah Terrorist Organisation (or FETO), represent an existential danger for the Turkish state.

These people, also known as the Gülen Movement, have been carrying out activities to establish a parallel structure, undermining the Turkish constitution, rather than fulfilling the purposes of the state.

It clearly turned out that the real purpose of this structure is to take over the state and for this reason staffing in public institutions and organizations: especially in Turkish Armed Forces, civil administration units, jurisdiction organizations, law enforcers, and educational institutions.

Precisely, FETO tries to get constitutionalized in the community with its activities in the field of education and religion by establishing its staff by raising up young people in line with its own purposes by means of the student houses, dorms, schools and private teaching institutions.

FETO has a vertical hierarchy comprising of continent, country, state, city, county, town, neighborhood and house imams all of whom accept Fethullah Gulen as the “imam of the universe” which is based on devotion and obedience. Gulen’s mission is to take control of the state and declare himself absolute ruler. In 2000 he said, I quote: “You must move in the arteries of the system without anyone noticing your existence until you reach all the power centers... You must wait for the time when you are complete and conditions are ripe, until we can shoulder the entire world and carry it... You must wait until such time as you have gotten all the state power, and you have brought to your side all the power of the constitutional institutions in turkey.”

Indeed, Fethullah Gulen is organized in all kinds of public institutions and organizations, political parties, industrial unions, foundations and associations and business organizations as well as Turkish Armed Forces, Law Enforcement Agencies, National Intelligence Service and judicial organs based on the instruction of his that “*You must be everywhere, if you are not everywhere you are nowhere*”.

In addition, FETO oppresses those who want to leave their structure and imposes various sanctions on them. They denounce those who do not want to get involved in their structure in order to prevent them attain effective positions in public professions.

By now it is clear that the structure turned into a parallel state and created guardianship over the state and the community while establishing a national and international community.

Therefore, it is the duty of the Republic of Turkey to protect its folk from the FETO which threatens the life of our nation. It has to be underlined that the elimination of FETO is still a matter of existence for the State and the Turkish public as a whole. As turkey has not yet succeeded in bringing to justice all perpetrators, the maintenance of the state of emergency is an indisputable necessity for the Republic of Turkey.

Re-battle argument: Despite the state of emergency having been lifted since last July 2018, extraordinary powers given to the Council of Judges and Prosecutors to dismiss judges and prosecutors during the State of Emergency were extended for 3 years by Law no. 7145. All judges who were dismissed were dismissed on the ground of having evidence or reasons to suspect that they were directly affiliated with FETO. In order to ensure impartiality and independence of courts and tribunals as required by international law, the Republic of Turkey needed to uphold the dismissal of those judges who were clearly not impartial and independent because they were found implementing FETO agenda in the judiciary system of our republic. Therefore, Turkey's top priority is still to enhance confidence in the judiciary by resolving problems caused by the Gülenist Terror Group (FETÖ).

2. Threats to the Republic of Turkey deriving from the war in Syria, mass influx of Refugees to Turkey and Terrorist attacks

a. 3.6 million Syrian refugees in Turkey

Due to the specific geopolitical positioning of Turkey, Turkey was forced to carry on the biggest burden of the on-going civil war in Syria by hosting 3.6 million Syrian refugees (UNHCR Report, September 2019):

Besides, hosting the biggest number of Syrian refugees, Turkey also hosts the largest number of refugees in the world some 4 million, and its response to refugees has been generous and positive. Turkey also has been actively cooperating with the UN on this matter, particularly with the UNHCR and IOM and other international humanitarian organizations, making sure that Turkish legislation (Law on Foreigners and International Protection and Temporary Protection Regulation) “provides refugees and asylum-seekers with a range of rights, including access to education, health care and social services, upon registration with the authorities”, and making sure that Turkish institutions provide adequate housing (UNHCR: “over 240,000 refugees are accommodated in the 22 government-run refugee camps.”)

Besides cooperation with the UN, on 18 March 2016, the European Council and Turkey reached an agreement aimed at stopping the flow of irregular migration via Turkey to Europe. According to the EU-Turkey Statement, “all-new irregular migrants and asylum seekers arriving from Turkey to the Greek islands and whose applications for asylum have been declared inadmissible should be returned to Turkey.” Turkey furthermore agreed to accept the rapid return of all migrants not in need of international protection crossing from Turkey into Greece, and to take back all irregular migrants intercepted in Turkish waters, and to continue stepping up measures against migrant smugglers welcoming the establishment of the NATO activity on the Aegean Sea.

Conclusion: Although, the European Union has obliged itself to provide the 3 billion EUR for refugee facilities in Turkey for concrete projects; and although EU has promised that will rapid the visa liberalization in the accession talks for Turkey, the Turkish government has only received a fraction of the promised financial support from the agreement, and can no longer continue to carry on this weight alone without adequate international support, because some 4 million refugees in Turkey make additional burden to its current internal political and legal system.

b. Massive and repeated terrorist attacks

“Turkey has faced massive and repeated terrorist attacks perpetrated by the so-called “Islamic State of Iraq and the Levant” (ISIL/Daesh), the Kurdistan Workers’ Party (PKK) and the PKK-affiliated Kurdistan Freedom Hawks (TAK). These attacks have caused hundreds of casualties in Ankara, Suruç, Istanbul, Bursa, Diyarbakır, Kayseri and other cities in Turkey. In addition, the border city of Kilis was targeted by shelling from Syrian territory. The Assembly unequivocally condemns these attacks and all terrorist action and violence perpetrated by the PKK, Daesh or any other organization, which can by no means be tolerated.” (Resolution 2156 (2017) Parliamentary Assembly, §5).

Massive and repeated terrorist attacks are making the overall situation in Turkey more unstable, threatening the public order. Therefore, our Government needed to minimize the power of those terrorist groups whose activities were threatening to the public order of the EU as well. Thanks to the undertaken actions by the Turkish Government, Turkey has recorded the largest fall in terrorism across Europe last year (according to the Global Terrorism ranking list, conducted by the think tank Institute for Economics and Peace). According to this research on Global Terrorism Index 2018, “the fatalities from terrorism in Turkey fell from 659 in 2016 to 123 in 2017, and with this fall Turkey ranked 12th on the 2018 list, compares to ranking 9th in 2017” (the list included 163 countries in the world). Furthermore, the Turkish Government was praised for tackling the reduction of ISIL and PKK presence by 81 percent. For example, the report said that “PKK was the deadliest terror group in 2017 in Europe, adding that it staged only one attack outside Turkey in 2017, an arson attack on a mosque in Germany”. Therefore, our countering violent extremism and terrorism government decisions are internationally recognized as successful and necessary for the sake of peace and security not just in Turkey but also in the whole of Europe.

3. Declaration and maintenance of state of emergency

In my pleading, I will show, that the declaration and maintenance of the state of emergency in Turkey stands fully in accordance with the Constitution of the Republic of Turkey and the ECHR.

First, I will relate to the Constitution of the Republic of Turkey. In a second step, I will relate to the European Convention on Human Rights.

Article 120 of the Constitution of the Republic of Turkey determines that the state of emergency can be declared “in the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order”. Article 15 allows for “partial or total” suspension of fundamental rights and freedoms “during the state of emergency”. All procedural requirements set forth by Article 120 were respected.

From the arguments presented by my co-councils Asja and Roja it follows, that Turkey indisputably continues to face a situation, which requires speedy, comprehensive and far-reaching measures from the side of the Turkish Authorities allowed for by the emergency regime.

As the Venice Commission has rightly pointed out, - I quote - “an emergency situation has its own political logic: the executive authorities should be able to act quickly and pro-actively; the public opinion in such moments expects radical (...) measures from all branches of government.” (Venice Commission, Opinion on emergency decree laws, §90.) It follows from there that the state of emergency was declared in accordance with the Constitution, moreover, that the upholding of the emergency regime is both necessary and fully justified under the Constitution of the Republic of Turkey.

Furthermore, the state of emergency was declared in full accordance with Article 15 ECHR. The honourable Court has described the “state of emergency” in the case *Lawless* as, - I quote - “an exceptional situation or crisis of emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed” (ECtHR, *Lawless*). From the pleading of my co-councils Asja and Roja, it follows that, Turkey was and continuously is in a situation of emergency as set out in Article 15 ECHR.

As the honourable Court determined in the case *Brannigan and McBride*, the national authorities are - I quote - “by reason of their direct and continuous contact with the pressing needs of the moment (...) in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. Accordingly, in that matter a wide margin of appreciation should be left to the national authorities.” (ECtHR, *Brannigan and McBride*.)

The Turkish Authorities acted in all moments throughout the duration of the state of emergency in full respect of their responsibility to preserve the public order and security, democratic institutions, the fundamental rights and freedoms of the people and the integrity of the Turkish state. All measures were taken in diligent respect and full awareness of Turkey’s international obligations.

III. Right to an effective remedy

Article 13 of the European Convention on Human Rights (ECHR) provides that ‘everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity’. A similar provision is to be found in Article 47 of the EU Charter of Fundamental Rights: “Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article”.

The primary aim of these provisions is to increase judicial protection offered to individuals who wish to complain about an alleged violation of their human rights. In that sense, the right to an effective remedy is an essential pre-condition for an effective human rights policy.

At the same time, these provisions are the embodiment of the principle of subsidiarity. This principle is one of the underlying foundations of the Convention mechanism.

OUR HONORABLE OPPONENTS NEED TO BE AWARE THAT Domestic authorities of the High Contracting Parties to the ECHR have the primary duty to guarantee Convention rights and freedoms, whilst the Court serves as a ‘safety net’.

Article 13 of the Convention has therefore “close affinity” with Article 35 paragraph 1 of the Convention. The respondent State ‘must first have an opportunity to redress the situation complained of by its own means and within the framework of its own domestic legal system’. (See EComHR *Fifty-seven inhabitants of Louvain v. Belgium*, appl. no. 1994/63, in the Yearbook of the ECHR 1964, at 252).

The Court may only deal with the matter after all domestic remedies have been exhausted insofar as “that rule is based on the assumption, reflected in Article 13 of the Convention [...] that there is an effective remedy available in the domestic system in respect of the alleged breach”. However, “the only remedies which Article 35 paragraph 1 requires to be exhausted are those that relate to the breach alleged and are available and sufficient. The existence of such remedies must be sufficiently certain, not only in theory but also in . . .

IV. Right to a fair trial

1. Non-violation of the right to a fair trial

The Republic of Turkey strongly declines the accusations that it had violated the right to a fair trial (Article 6 ECHR). Firstly, there was a legal basis for measures that have been taken: three Decrees Law (Decree with force of law No. 668 – 27 July 2016, No. 669 – 31 JULY 2016 and Decree Law No.: KHK/667), the Article 15 of the Constitution of the Republic of Turkey and Article 15 of the European Convention of Human Rights. Both articles predict that (human) rights can be restricted or suspended during the state of emergency. Secondly, the limitations pursue a legitimate aim such as the protection of nation security and maintenance of public order. Thirdly, the limitations are proportionate. If you take the total number of judges and prosecutors that were suspended, dismissed and/or detained (1/5 of the total number of judges and prosecutors were suspended and 3390 subsequently dismissed, 2386 had been detained) and compare that to number of citizens in the Republic of Turkey today, the number of judges and prosecutors remaining in position is still higher and can absolutely guarantee the right of a fair trial, therefore the functions of courts in Turkey was in no way impaired. The existence and effectiveness of procedural safeguards are still guaranteed. To add, there were reasonable suspicions and even evidence that those judges and prosecutors are connected to the Gulen Movement, which is in fact a dangerous terrorist group, and pose a threat to independence of the national judiciary and national security. Consequently, it was necessary for Turkey to limit this right, which ultimately is not even an absolute right. Without this measures Turkey could not fulfil its obligation as a state responsible for its citizens.

2. Regarding the arrests of lawyers

The Republic of Turkey claims that does arrest were in no way arbitrary and discriminatory. Enough evidence was obtained to reasonably suspect that all those lawyers were connected or collaborating with the Gulen Movement, arrests were ordered by public prosecutors and standards of proof were met at every stage of the investigations and arrests. The State of Turkey can assure that appropriate legal counselling is and will continue to be provided to them (arrested lawyers) and that they will face a fair trial by competent and impartial judges.

3. Re-battle

We have to point out that many journalists, including very critical ones, are not imprisoned and consider this accusation strongly offensive.

We strongly believe that Turkey has an effective system of judicial review. We would like to emphasize that what constitutes a fair trial cannot be subject of a single unvarying rule but must depend on the circumstances of the particular case. Primary concern must be to evaluate the overall fairness, which we strongly believe still governs the national judiciary system. In the end we would like to underline that Article 6 of ECHR should not be applied in such a manner as to put disproportionate difficulties in the way of the police authorities and taking effective measures to counter terrorism or other serious crimes in discharge of their duty under Article 2, 3 and 5 of the Convention to protection the right to life and the right to bodily security of members of the public, if public interest and security is concerned (*Ibrahim and others vs. United Kingdom*).

§3 of Art 45 of Law no 6216 reads:

“Individual applications cannot be made directly against legislative acts and regulatory administrative acts.....”. Hence firstly it has to be pointed out individuals have no right to complain!

In property issues these of private characters should be weighed up with properties, which belong to the public. Hence the case is inadmissible regarding due to the following reasons. Surely the Turkish state confiscated private and commercial equity properties. Due to the Venice Commission the least vehicle would be to temporary freeze the equity assets. This commission claims that there is no cause to justify economically dependent contractors, who they trade with. This opinion cannot be shared because this vehicle would not be sufficient enough to ensure that the Gülen movement gets hindered to destroy the Turkish democracy.

In addition, mostly these are related parties. Due to Art 15 ECHR the Republic of Turkey by ensuring public security just takes the due diligence task to ensure, who you are contracting with, which we see was not perceived by these companies. In alternative Art 16 ECHR has to be pointed out that Fetullah Gülen has to be treated as a foreigner because no sovereign country in the world may accept a betrayer who since many of years interferes the domestic policy in accordance with foreign forces. Who could it then be? Domestic Turkish people cannot be the collaborators because already their brains are infiltrated by him. Their free will is damaged. So, I come to the next point. You accept the liberty of conscience due to Art 9 ECHR. Well... You see that we are preserving this right.

To the question, why the applicants waited several months until they accused the defendants, they also claimed that sometimes a long duration of observing is needed to find out the evidence of proving facts. Obviously, the applicants are sharing their views with the defendants that by proving facts there is a certain amount of facts needed until judicial acts are raised. Hence there have to be a certain amount of people to be imprisoned, until the real facts are proved. This does not violate the innocence principle. This is justified by securing the prosecuting the collective right of Turkish security.

It should be pointed out due to Art 16 ECHR that it is the legitim interest of every sovereign state to immunize themselves from the attacks of foreigners like Fetullah Gülen. As an unpatriotic act he left the country for many years and is brainwashing the Turkish people by institutes like hospitals, schools and universities. These are mainly poor people which get infiltrated by a reactionary Islamic ideology. They cannot get rid out of this kind of thinking in their everyday life, because they get emotionally and economically dependent of this seducer. Finally, the term brainwashed is justified because as it is shown here these people lost their free will. Reminding surely the Turkish Republic is the biggest defender of Art 9 ECHR. This right cannot be practised by another person.

For all these reasons we submit that firstly, the case is inadmissible as the applicants did not exhaust all remedies as prescribed by the European Convention of Human Rights, secondly that the declaration of the state of emergency was persistently in accordance with the Constitution of the Republic of Turkey as well as with the European Convention of Human Rights. Thirdly, there was no violation of the right of fair trial, of the right to an effective remedy and of the right to property.

Finally, the court has to be pleaded to deny the accusations that the state is responsible for any torturing acts. The Republic of Turkey takes such accusations very serious. Hence there will immediately a national commission created, whose purpose it is to prosecute the responsibilities for such cruel acts. Some NGOs may be linked to the Gülen movement. Hence their theories cannot be taken seriously. This is the difference to the honourable applicants. So their thesis in this regard will lead to a valuable answer of the Turkish Republic.

Publishing information:

Dajana Bjelovuk

**Ludwig Boltzmann Institute of Human Rights
Research Association (BIM-FV)**

Freyung 6 (Schottenhof)
1st courtyard, staircase 2
A-1010 Vienna, Austria

Phone +43 1 4277 27420
dajana.bjelovuk@univie.ac.at
bim.office@univie.ac.at
<http://bim.lbg.ac.at/en>

Photos © by Dajana Bjelovuk