Ministerie van Defensie

Ukraine and the Netherlands v. Russia and the Right to Private Life

Silent Leges Inter Arma Conference, 18 September 2025, Bruges

Prof. Marten Zwanenburg

Structure

1. Background to the ECtHR's judgment in Ukraine and the Netherlands *v*. Russia
2. Extraterritorial jurisdiction
3. The interrelationship between IHL and the ECHR
4. The right to private life and 'filtration operations'
5. Conclusion

Background to the judgment

Different interstate applications that were joined

Decision on admissibility in November 2022

26 States intervened

Judgment on merits delivered on 9 July 2025

Russia held responsible for violating a wide range of ECHR rights, including the right to private life in Art 8 ECHR

Jurisdiction

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.
Article 1 ECHR

"In conclusion, by virtue of the control exercised over the territory concerned by the Russian armed forces, Russia exercised effective control over such territory and thus had jurisdiction for the purposes of Article 1 of the Convention for any period during which such areas remained under the control of its armed forces"
Ukraine and the Netherlands v. Russia, para. 338

Relationship ECHR - IHL

IHL does not displace human rights during conflict

Russia did not derogate

The ECHR must be interpreted as far as possible in harmony with other rules of international law

IHL can be used as an interpretive tool

The ECHR and IHL may conflict, but not here (?)

The right to private life and filtration operations

Filtration measures entailed mass collection of data

This amounts to an interference with Art 8 ECHR

It is a violation of this article unless the criteria under Art 8 (2) ECHR are met

The right to life and filtration operations

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
Article 8 (2) ECHR

Ukrainian law as a legal basis (Denusyuk a.o. v Ukraine)?

Conclusion

Derogation: is ‘extraterritorial derogation’ possible?

In-depth analysis of the IHL – ECHR relationship?

‘Necessary in a democratic society’ and taking the circumstances of ongoing armed conflict into account

Application of the right to privacy to States not parties to the ECHR during armed conflict

Register now!

Conference on the Law Applicable to the Use of Biometrics by Armed Forces

Tallinn, 23–24 October 2025

The NATO Cyber Cooperative Cyber Defence Centre of Excellence, the War Studies Research Centre of the Netherlands Defence Academy and the Amsterdam Center for International Law are organising an international conference on the law applicable to the use of biometrics by armed forces in Tallinn, as a direct follow-up to the 2nd conference on the same topic (held in Tallin on 7-8 May 2024).

The 1 ½ day conference will feature high-level panel discussions, touching on, amongst other things, topics such as:

- Regional approaches to the law applicable to the use of biometrics
- The role of the private sector and procurement of biometric systems
- The role of biometric data in ensuring accountability at the domestic and international level

The conference will also include briefs and expert presentations about:

- Best practices from biometric exercises; and,
- Research projects concerning military data protection aspects.

The conference will take place on **23 – 24 October 2025** in Tallinn, Estonia, at the **Cyber Range CR14** (Rävala pst 14, 10141 Tallinn). The format will be **in-person**.

Please register your attendance before 30 September, You can use the following link to register: https://emea.dcv.ms/QtuvgdADWf. For any inquiry about organisational aspects (e.g. the possibility of contributing to the conference with a presentation or a brief), please get in touch with the head of the organisation:

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