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DOI:10.1017/ilm.2024.6

BRIEFLY NOTED*
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Judicial and Similar Proceedings

1. Wałęsa v. Poland (European Court of Human Rights – November 23, 2023)

<https://hudoc.echr.coe.int/eng?i=001-229366>

The European Court of Human Rights (ECtHR) handed down a unanimous decision on November 23, 2023, in a case brought by former Polish President Lech Walesa against the Polish Government. The Court concluded that a Polish Appeals Court, the Chamber of Extraordinary Review and Public Affairs (CERPA), had violated Walesa's right to an independent and impartial trial, breached "the principle of legal certainty," and violated his right to respect for private and family life. The Court found that the CERPA "was not an 'independent and impartial tribunal established by law'" and was often used by the state to "further its own political opinions and motives," as the Prosecutor General of Poland and the Executive branch of government held considerable influence and authority over the judicial system. Additionally, the 2017 law that created the CERPA gave to the General Prosecutor "the unlimited power to contest virtually any final judicial decision" and extended the time limits for filing appeals, which enabled the Prosecutor to act retroactively and undermine the "requirement of foreseeability."

A report in JURIST highlighted the ECtHR's finding that "the extraordinary appeals process in Walesa's case 'could not be separated from its political background'" and had "'adversely affected Mr. Walesa's private life to a significant degree.'" JURIST noted that Walesa is a "staunch supporter of democracy and left-wing values . . . [and] has been openly critical of the Polish government." The decision in this case is one in a string of cases in which the ECHR has found the Polish Extraordinary Appeals Court to be lacking independence and impartiality, and as continuously violating defendants' rights. The Court has required Poland to rectify the situation through legislative and other means, and ordered Poland to pay Walesa non-pecuniary damages in the amount of thirty-thousand euros.

2. Right to Strike under ILO Convention No. 87 (Order on Request for Advisory Opinion) (International Court of Justice – November 16, 2023)

<https://www.icj-cij.org/sites/default/files/case-related/191/191-20231116-ord-01-00-en.pdf>

On November 16, 2023, the International Court of Justice (ICJ) issued an order organizing proceedings for rendering an advisory opinion on the question of whether the right of workers to strike is protected under the Freedom of Association and Protection of the Right to Organize Convention of 1948. The ICJ decided that the International Labor Organization (ILO) and States parties to the Convention "are considered likely to be able to furnish information on the question submitted to the Court . . . ." Additionally, the six consultive organizations of the ILO "(the International Organization of Employers, the International Trade Union Confederation, the World Federation of Trade Unions, the International Cooperative Alliance, the Organization of African Trade Union Unity, and Business Africa)" are considered to be able to provide relevant information to the Court.

The International Labor Organization submitted only the one question and requested that the advisory opinion be "rendered urgently," which requires the Court to "take necessary steps to accelerate the procedure." As such, the Court has set May 16, 2024, as the "time-limit within which" any written statements must be submitted and September 16, 2024, as the limit for submitting any comments on other written statements. The Court has not set any further dates or proceedings, having reserved "the subsequent procedure for further decision."

3. Application of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Canada and The Netherlands v. Syrian Arab Republic) (Provisional Measures Order) (International Court of Justice – November 16, 2023)

<https://www.icj-cij.org/sites/default/files/case-related/188/188-20231116-ord-01-00-en.pdf>

*With thanks to Michael G. Bergin, Jr. for his assistance in drafting some of these summaries.

https://doi.org/10.1017/ilm.2024.6 Published online by Cambridge University Press

On November 16, 2023, the International Court of Justice voted 13 – 2 in.favor of issuing a binding Order in the case of *Canada and the Netherlands v. Syrian Arab Republic*. The Order adopted two provisional measures, which require Syria to prevent acts of torture and other cruel punishment, ensure that its officials and organizations do not commit torture or other cruel punishments, and preserve any evidence related to the allegations of the case. A Request for the Indication of Provisional Measures seeking such an order had been entered on June 8, 2023, by Canada and the Netherlands, for which oral arguments were held on October 10, 2023. The Request came alongside Canada's and the Netherlands' Joint Application instituting proceedings against Syria for violations of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The Request and Application were made pursuant to Articles 36 and 41 of the Statute of the Court, Article 30 of the Convention against Torture, and Articles 73, 74, and 75 of the Rules of the Court. Vice-President Gevorgian and Judge Xue voted against both provisional measures, with Vice-President Gevorgian appending a dissenting opinion and Judge Xue appending a declaration.

The Application and Request alleged that Syria had used "torture and other cruel, inhuman or degrading treatment or punishment" in the violent repression of civilian demonstrations, the use of chemical weapons against civilians, and through the use of sexual and gender based violence against detainees. The Application, on page 2, notes that "Syria has consistently denied wrongdoing, despite clear and compelling evidence demonstrating the sheer magnitude of violations of the Convention against Torture that are attributable to Syria and that continue to this day." Despite a ceasefire being in place, Syria has continued to violate the Convention and offenders have had "continued impunity."

Syria and Syrian officials have long faced criticism and condemnation of their actions during the Arab Spring and the resulting civil war in their country. In recent years, Syrian officials have been facing criminal legal action and conviction in foreign countries for their crimes, with universal jurisdiction serving as the basis for the proceedings. In January 2022, Anwar Raslan, a colonel in the Syrian intelligence service, was sentenced to life in prison by a German court for "torture, killings, serious depravation of liberty, rape, sexual assault, and hostage taking" that had taken place during his time as overseer of a Syrian prison. Most recently, on November 15, 2023, French judges issued arrest warrants for Bashar Al-Assad and three others for their use of chemical weapons against civilians.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Amendments to Penal Code concerning the prohibition against inappropriate treatment of religious texts (Denmark – December 7, 2023)

<https://www.lovtidende.dk/api/pdf/240851> (in Danish only)

<https://www.loc.gov/item/global-legal-monitor/2023-12-14/denmark-parliament-approves-government-amendment-of-penal-code-criminalizing-inappropriate-treatment-of-holy-texts/> (summary by the U.S. Library of Congress)

On December 7, 2023, the Danish Parliament approved an amendment to the Danish Penal Code penalizing inappropriate treatment of recognized religious texts. As explained in a summary by the U.S. Library of Congress, the amendment was adopted in response to several incidents of burnings of the Qur'an earlier this year. Also known as the "Qur'an Act," the legislation actually applies to all religions, but applied exclusively to texts and not religious objects. The amendment was adopted with 94 members of parliament voting in favor, 77 voting against, and eight members absent. The amendment was inserted into section 110 of the penal code which prohibits the public mockery of a foreign nation, its flat, or its landmarks. As indicated in the U.S. Library of Congress summary of the amendment, the amendment itself does not define "inappropriate treatment," but the Danish Department of Justice published a fact sheet that provides examples, such as burning, kicking, or tearing a religious text. The amendment took effect as soon as they were published in the Danish Legal Gazette on December 13.

https://doi.org/10.1017/ilm.2024.6 Published online by Cambridge University Press

2. Ukraine Register of Damages Elects Board (Council of Europe – December 1, 2023)

<https://www.coe.int/cs/web/portal/-/conference-of-participants-of-the-register-of-damage-for-ukraine-elects-its-board>

On November 16, the Conference of the Participants of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine has elected seven members to Register's Board. The Board is responsible for drafting the rules and regulations that govern the Register and, according to a press release from the Council of Europe, it is "ultimately responsible for recording eligible claims in the Register. "

The Board consists of the following members who will serve for a term of three years (with the possibility of one further three year term): Yulia Kyrpa (Ukraine), Norbert Wühler (Germany), Chiara Giorgetti (Italy), Robert Spano (Iceland), Veijo Heiskanen (Finland), Lucy Reed (United States) and Aleksandra Mężykowska (Poland).

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