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BRIEFLY NOTED
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Judicial and Similar Proceedings

1. Prosecutor v. Karadžić (Appeals Chamber of the International Residual Mechanism for Criminal Tribunals – March 20, 2019)

<http://www.irmct.org/sites/default/files/casedocuments/mict-13-55/appeals-chamber-judgements/en/190320-judgement-karadzic-13-55.pdf>

On March 20, 2019, the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals set aside Radovan Karadžić's prior sentence of forty years and imposed a life sentence. Karadžić was convicted of genocide, crimes against humanity, and violations of the laws or customs of war in March 2016 by a Trial Chamber of the International Criminal Tribunal for the former Yugoslavia and sentenced to forty years in prison. His crimes relate to war crimes he committed during the 1990s conflicts in the Balkans, in particular the 1995 Srebrenica massacre of 8,000 Bosnian Serbs and the three-year long siege of Sarajevo. The Appeals Chamber reversed part of Karadžić's convictions related to the Overarching JCE and dismissed the rest of his appeal, while also dismissing most of the Prosecution's appeal, aside from the sentence. The Appeals Chamber judges found that the Trial Chamber "committed a discernible error and abused its discretion in imposing a sentence of only 40 years of imprisonment," and consequently imposed a life sentence.

2. Google Fined €1.49 Billion (European Commission – March 20, 2019)

<http://europa.eu/rapid/press-release_IP-19-1770_en.htm>

On March 20, 2019, the European Commission fined Google €1.49 billion for breaching EU antitrust rules regarding abusive practices in online advertising. The European Commission stated that Google abused its market dominance by using its position to include in a number of clauses in contracts with website owners that restricted how and whether they could show competitors' search ads on their search results pages. These competitors were then not able to compete on the merits, "because there was an outright prohibition for them to appear on publisher websites or because Google reserved for itself by far the most valuable commercial space on those websites, while at the same time controlling how rival search adverts could appear." These actions amounted to an abuse of Google's market dominance under EU antitrust laws by preventing competition on the merits from rivals in the online search advertising intermediation market. The Commission noted that market dominance is not illegal under EU antitrust rules, but "dominant companies have a special responsibility not to abuse their powerful market position by restricting competition, either in the market where they are dominant or in separate markets."

3. Khadr v. Warden of Bowden Institution (Court of Queen's Bench of Alberta, Canada – March 25, 2019)

<https://www.albertacourts.ca/docs/default-source/qb/khadr-v-warden-of-bowden-institution—reasons-for-decision.pdf?sfvrsn=53cbb880_2>

On March 25, 2019, Judge Mary T. Moreau in Alberta, Canada, decided in *Khadr v. Warden of Bowden Institution* that the war crimes sentence of a Canadian man, Omar Ahmed Khadr, who the United States previously detained at Guantanamo Bay, has expired. Khadr was captured in Afghanistan in 2002 when he was fifteen years old, pled guilty to crimes committed in Afghanistan in order to receive a sentence of eight years in 2010, was transferred to Canada in 2012 to continue serving his sentence, and was given judicial interim release in 2015. Since then Khadr has recanted and appealed his U.S. convictions to the United States Court of Military Commission Review, which is still pending. Judge Moreau determined that Khadr's time

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in conditional release should be considered as time in detention, which would have ended in October 2018. Judge Moreau found that the Youth Criminal Justice Act allows for bail conditions to be considered as part of a sentence and also that the decision did not violate the Treaty Between Canada and the United States of America on the Execution of Penal Sentences.

4. Berdzenishvili and Others v. Russia (European Court of Human Rights – March 26, 2019)

<http://hudoc.echr.coe.int/eng?i=001-191926>

On March 26, 2019, the European Court of Human Rights ruled in *Berdzenishvili and Others v. Russia* that Russia must compensate Georgian citizens in amounts ranging from EUR 2,000 to EUR 15,000 for violations of their human rights due to the administrative practice of arrest, detention, and expulsion in October 2006. In its judgment on the merits from March 2017, nineteen applicants brought charges against Russia after authorities instituted identity checks on Georgian nationals, arrested and detained them, and gave orders for their administrative expulsion from Russia. The Court delayed a decision on just satisfaction until the Grand Chamber released its ruling in *Georgia v. Russia (I)* related to similar circumstances concerning a large number of other Georgian applicants in which it awarded the applicants EUR 10 million to be divided among the victims.

5. Sudan v. Harrison et al. (U.S. Supreme Court – March 26, 2019)

<https://www.supremecourt.gov/opinions/18pdf/16-1094_3d94.pdf>

On March 26, 2019, the U.S. Supreme Court ruled in *Sudan v. Harrison et al.* against victims and their families of the USS Cole bombing, holding that a lower court could not issue a default judgment against Sudan because it had been improperly served. The case concerns the bombing of the USS Cole in Aden, Yemen, in 2000, which killed seventeen crew members, after which Al Qaeda claimed responsibility and the victims sued Sudan for giving material support to Al Qaeda for the bombing. When suing under an exception to the Foreign Sovereign Immunities Act, there are four methods of serving civil process, including "by any form of mail requiring a signed receipt, to be addressed and dispatched . . . to the head of the ministry of foreign affairs of the foreign state concerned." In this case, the service packet was addressed to the Sudanese Minister of Foreign Affairs at the Sudanese Embassy in the United States and a default judgment was issued against Sudan when it failed to appear in litigation. Sudan argued the judgment was invalid for lack of personal jurisdiction because the service packet must be sent to its foreign minister in Sudan, but the Second Circuit affirmed, finding that the statute was silent on where the mailing must be sent. The Supreme Court found in favor of Sudan and that service of process in this instance "requires a mailing to be sent directly to the foreign minister's office in the foreign state."

6. Germany v. Commission (Court of Justice of the European Union – March 28, 2019)

<http://curia.europa.eu/juris/celex.jsf?celex=62016CJ0405&lang1=en&type=TXT&ancre=>

On March 28, 2019, in *Germany v. Commission*, the Court of Justice of the European Union (CJEU) annulled a decision by the European Commission and set aside the General Court's judgment concerning orders for Germany to recover aid it had given certain industries that were heavy users of energy in the form of an exemption from a green energy surcharge in 2012. The case concerns a German law in which the state guaranteed producers of electricity from renewable sources a higher than market price, supported through a surcharge on energy suppliers. Germany capped the surcharge for customers who were part of "electricity-intensive undertakings in the manufacturing sector" such as aluminum and copper with the aim of maintaining their international competitiveness. In 2014, the European Commission determined the reductions on the surcharge

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Germany had granted heavy energy users were illegal state aid and ordered Germany to recoup about 5 billion euros of the discount, which the General Court confirmed in 2016. The CJEU held that "the General Court was wrong to find that the funds generated by the EEG surcharge constituted State resources" and that "that the Commission failed to establish that the advantages provided for by the EEG 2012 involved State resources and therefore constituted State aid."

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Resolution 2456 (2019) (UN Security Council – February 26, 2019)

<https://undocs.org/S/RES/2456(2019)>

On February 26, 2019, the Security Council passed Resolution 2456 (2019) in which it expressed its increased concern regarding the deteriorating humanitarian situation in Yemen and "all instances of hindrances to the effective delivery of humanitarian assistance, including limitations on the delivery of vital goods to the civilian population of Yemen." Acting under Chapter VII of the UN Charter, the Security Council extended the travel ban, arms embargo, and economic sanctions against individuals or entities threatening the peace and stability of Yemen until February 26, 2020. The Council also extended the mandate of the Panel of Experts until March 28, 2020, and requested that the Panel of Experts provide a mid-term update by July 28, 2019, and a final report by January 28, 2020. The Council urged member states and international organizations to ensure cooperation with the Panel of Experts, and urged member states to ensure the safety of the Panel of Experts and provide them with access to persons, documents, and sites.

2. Resolution 2458 (2019) (UN Security Council – February 28, 2019)

<https://undocs.org/S/RES/2458(2019)>

On February 28, 2019, the UN Security Council passed Resolution 2458 (2019), in which it extended the mandate of the United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) until February 8, 2020, and endorsed the Secretary-General's recommendations for its reconfiguration with the aim of completing its tasks by the end of 2020. The Council supported a reprioritization of UNIOGBIS's tasks into three phases, so that in Phase I, the electoral phase, it will remain as configured and support legislative and presidential elections scheduled for 2019; in Phase II, the post-electoral phase, it will create conditions to implement the reform agenda; and in Phase III, the transition phase, it will implement the transition plan and transfer its work to the UN Country Team, the United Nations Office for West Africa and Sahel, and international partners, to be completed by December 31, 2020. The Council highlighted the need for stakeholders in Guinea-Bissau to consolidate peace and stability, urged the authorities of Guinea-Bissau to promote and protect human rights, and called upon national authorities to expedite the review of Guinea-Bissau's Constitution.

3. Final Report North Korea (UN Panel of Experts – March 11, 2019)

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/028/82/pdf/N1902882.pdf?OpenElement>

On March 11, 2019, a UN panel of experts released the final report on its work, finding that North Korea's nuclear and ballistic missile programs "remain intact and the country continues to defy Security Council resolutions through a massive increase in illegal ship-to-ship transfers of petroleum products and coal." The panel found that North Korea had violated the arms embargo and had tried to supply small arms and light weapons to groups in Yemen, Libya, and Sudan. It also noted that "financial sanctions remain some of the most poorly implemented and actively evaded measures of the sanctions regime." In looking into ship-to-ship transfers, they inspected seized vessels that had been involved in prohibited coal trading and found "ship identity

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laundering, whereby the owners had deceived IMO into providing new vessel identity numbers to avoid repeat detection" and also that North Korean ports and airports "were being used for rampant violations of the resolutions, ranging from illegal oil imports and coal exports to the smuggling of bulk cash by nationals of the Democratic People's Republic of Korea." The panel of experts also made a series of recommendations to member states, the UN Security Council, and other UN entities concerning practices to prevent further violations of the sanctions regimes.

4. Police Violence Against Afro-descendants in the United States (Inter-American Commission on Human Rights – March 18, 2019)

<http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>

On March 18, 2019, the Inter-American Commission on Human Rights released a report on "Police Violence Against Afro-descendants in the United States." The Commission reviewed the situation of structural discrimination against African Americans in the United States, looking specifically at issues of disparity and racial bias by the police and within the criminal justice system. The Commission noted that the issues within the report impact both domestic civil rights issues, as well as international human rights obligations regarding non-discrimination, use of force, and access to justice. The Commission stated that "the historical legacy of subjugation, enslavement, terror, marginalization, segregation, and exclusion from enjoying the rights of citizens in the U.S., both *de jure* and *de facto*, has continuing repercussions for African Americans' full enjoyment of human rights today," and highlighted "the structural nature of discrimination and the corresponding need for systemic reforms to fully address past abuses and ensure non-repetition." Commissioner Margarette May Macaulay stated that the aim of the report's recommendations are "to provide the State with guidelines to better improve its data collection system, carry out law reforms and reverse militarization in its police system."

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