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Judicial and Similar Proceedings

1. Case C-128/18 Dumitru-Tudor Dorobantu (Court of Justice of the European Union)

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=219163>

On October 15, 2019, a Grand Chamber of the Court of Justice of the European Union (CJEU) issued its judgment in case C-128/18 *Dumitru-Tudor Dorobantu*, a case concerning the interpretation of Article 4 of the Charter of Fundamental Rights of the European Union and Council Framework Decision 2002/584/JHA of June 13, 2002, on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of February 26, 2009. Article 4 of the Charter provides for the prohibition of torture and inhuman or degrading treatment or punishment and, under Article. Article 4 of the Charter is to have the same meaning and scope as Article 3 of the European Convention on Human Rights. The case involved the issuance of an arrest warrant for Mr. Dorobantu by a Romanian judicial authority to German authorities, as Mr. Dorobantu resided in Hamburg. Prior to executing the warrant, the German court referred a number of questions to the CJEU for a preliminary ruling concerning material conditions of detention and how to assess whether such conditions comply with EU fundamental rights guarantees. The CJEU ruled effectively that requested judicial authorities must suspend execution of an arrest warrant until they have been provided with sufficient evidence to demonstrate whether or not the fundamental rights of the person in question are in actual danger of being infringed.

2. Case C-502/19 Junqueras Vie (Court of Justice of the European Union)

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=221795

The Court of Justice of the European Union (CJEU) held in a judgment issued on December 19, 2019, that Members of the European Parliament (MEP) acquire that status from the moment the election results are declared and therefore enjoy, from that moment, the privileges and immunities attached to that status. According to a press release released by the Court, Case C-502/19 *Junqueras Vie*, concerned the provisional detention of Mr. Junqueras Vies, who was involved in the organization of a referendum on self-determination in Catalonia and elected to the European Parliament while in detention. The issue in the case was the interpretation of a Spanish law which required newly-elected parliamentarians to make an oath before the central election board and to travel to the European Parliament for the first session of the new parliament. Mr. Junqueras Vies had requested authorization to leave detention so that he could fulfil those requirements, but was denied. The CJEU held that: (1) a person elected as MEP enjoys the immunities of that status from the time of declaration of the results; (2) such individuals also enjoy immunity regarding travel linked to their status as MEP, which therefore gives them immunity while traveling to European Parliament meetings; and (3) travel-related immunity requires "lifting any measure of provisional detention imposed prior to the declaration of that Member's election" to allow that person to travel to Parliament meetings. However, the Court also held that, "if the competent national court considers that the measure should be maintained, it must as soon as possible request the European Parliament to waive that immunity" under Article 9 of Protocol (No 7) on the privileges and immunities of the European Union. Mr. Junqueras Vies was later sentenced to thirteen years in prison and held ineligible for public office for that period.

3. Standard Chartered Bank (Hong Kong) Ltd. v. United Rep. of Tanz. (International Centre for Settlement of Investment Disputes)

<http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C4926/DS12957_En.pdf>

On October 11, 2019, a tribunal of the International Centre for the Settlement of Disputes (ICSID) found the Government of Tanzania to be in breach of 1995 Implementation Agreement under which Tanzania made various undertakings and assurances in favor of Independent Power Tanzania Limited (IPTL), "including undertakings against discriminatory action and expropriation." For example, Tanzania "granted IPTL the

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exclusive right to design, finance, insure, construct, complete, own, operate and maintain" its facility in Tanzania. Tanzania also agreed to a guarantee to pay IPTL any unpaid costs owed to IPTL by Tanzania Electric Supply Company Limited (TANESCO) as a result of arrangements made under a separate Power Purchase Agreement in which IPTL agreed to delivery electricity to TANESCO for an initial period of 20 years. Tanzania argued that the claimant did "not have a qualifying 'investment' within the objective meaning of . . . Article 25(1) of the ICSID Convention" and that "the acquisition of the loan by IPTL to establish the facility did not involve any expectation of receiving an economic return beyond the mere repayment of the loan with interest." The tribunal found that Tanzania had violated the Agreement because it transferred control over IPTL to Pan Africa Power Solutions, a local company, and because Tanzania failed to honor the guarantee with respect to funds owed by TANESCO. Tanzania was ordered to pay USD 185 million in damages, plus interest.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Financial Channels to Facilitate Humanitarian Trade with Iran and Related Due Diligence and Reporting Expectations (U.S. Department of the Treasury and Department of State)

<https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_humanitarian_20191025.pdf>

On October 25, 2019, the U.S. Financial Crimes Enforcement Network designated Iran as a "jurisdiction of primary money laundering concern" under section 311 of the US Patriot Act. According to a press release from the Department of the Treasury, this means that "the opening or maintaining of a correspondent account in the United States for or on behalf of an Iranian financial institution" is prohibited. It also prevents "foreign financial institutions' correspondent accounts at covered U.S. financial institutions from processing transactions involving Iranian financial institutions." In recognition that this designation may impact the delivery of humanitarian aid to Iranian people, the U.S. Departments of the Treasury and State simultaneously announced the creation of a humanitarian mechanism aimed at "help[ing] the international community perform enhanced due diligence on humanitarian trade to ensure that funds associated with permissible trade in support of the Iranian people are not diverted by the Iranian regime to develop ballistic missiles, support terrorism, or finance other malign activities." The mechanism will, among other things, "enable foreign governments and foreign financial institutions to seek written confirmation from Treasury that the proposed financial channel will not be exposed to U.S. sanctions in exchange for foreign governments and financial institutions committing to provide to Treasury robust information on the use of this mechanism on a monthly basis." The mechanism's specific requirements provide detail regarding transaction documentation and information that Treasury and State may require.

2. United States-European Union Joint Statement on Justice and Home Affairs (U.S. Department of Justice)

<https://www.justice.gov/opa/pr/joint-us-eu-statement-following-us-eu-justice-and-home-affairs-ministerial-meeting-0>

On December 11, 2019, the United States and the European Union gathered in Washington for their twice-annual meeting to discuss priorities in the field of Justice and Home Affairs. A joint statement following the meeting explains that the aim of the Ministerial Meeting is "to oversee transatlantic cooperation in the area of Justice and Home affairs and address common security threats." Chief among priorities for the two Transatlantic Partners is "fighting terrorism in all its forms," and an emphasis on sharing information derived from combat zones to assist in criminal prosecutions. The statement also highlighted the United States-European Union agreement on Passenger Name Records as "an important instrument for enhancing the security of our citizens." Other topics identified as significant include judicial cooperation in cyberspace, encryption in the context of terror-related and criminal activity, and the need to shore up the United States' and the European Union's electoral systems to prevent interference.

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3. Statement of the OAS General Secretariat on the Situation in Venezuela (Organization of American States)

<https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-116/20>

On January 5, 2010, the General Secretariat of the Organization of American States (OAS) issued a statement on the situation in Venezuela and the re-election of interim President and President of the National Assembly, Juan Guaidó. The statement "welcomed" the re-election of Guaidó, which took place on the fifth and emphasized the Secretariat's continued recognition of Guaidó and his cabinet "as the legitimate authority of the country." The Secretariat reiterated its "condemnation of the fraudulent attempt to strip Juan Guaidó . . . of his powers" and "demand[ed] that the dictatorial regime of Nicolás Maduro refrain from acts of violence against the democratic institutions presented by [Guaidó's interim government]."

4. Urgent Joint Opinion on the amendments to the Law on organisation on the Common Courts, the Law on the Supreme Court and other Laws (Council of Europe)

<https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)002-e>

On January 16, 2020, the Council of Europe's Venice Commission for Democracy Through Law and the Directorate General of Human Rights and Rule of Law of the Council of Europe published an "Urgent Joint Opinion on the amendments to the Law on organisation on the Common Courts, the Law on the Supreme Court and other Laws." Like the OSCE opinion published earlier this week, the Venice Commission expressed concern over the laws and their negative impact on the independence of the Polish judiciary. A similar sentiment was expressed by the Venice Commission in a 2017 opinion on similar legislative reforms emanating from Poland. In its recent opinion, the Venice Commission states that, though the 2019 legislation attempts to remedy some of the problems of the 2017 legislative reforms, the 2019 draft legislation "may be seen as further undermining the independence of the judiciary," in particular by limiting judges' freedom of speech and association. The Venice Commission further concludes that the 2019 legislation "diminish[es] judicial independence and put[s] Polish judges into the impossible situation of having to face disciplinary proceedings for decisions required by the [European Convention on Human Rights], the law of the European Union, and other international instruments." The Venice Commission therefore recommends that the 2019 draft legislation not be adopted.

5. Urgent Interim Opinion on the Bill Amending the Act on the Organization of Common Courts, the Act on the Supreme Court and Certain Other Acts of Poland (as of 20 December 2019) (Organization for Security and Co-operation in Europe)

<https://www.osce.org/odihr/443731>

On January 14, 2020, the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) published an Urgent Interim Opinion on the publication of a Bill which amends several legislative Acts of Poland relating to the organization of the Supreme Court of Poland. The Opinion was drafted in response to a request from the Polish Commissioner for Human Rights and assesses the Bill's compliance with OSCE and international human rights and rule of law standards, while still recognizing the right of every state to reform its judiciary. The Bill at issue was adopted by the Sejm in the Polish Parliament and is now before the Senate for consideration. The ODIHR Opinion concludes that "several provisions [of the Bill] reviewed are inherently incompatible with international standards and OSCE commitments on judicial independence" and that certain "breaches of these standards are so fundamental that they may put into question the very legitimacy of the Bill, which should be reconsidered in its entirety and should not be adopted as it is." For example, the Opinion highlights its "most significant concern": the Bill prohibits "any review or questioning of the status of any individual appointed by the President of the Republic to a judicial position or of any court, tribunal or other state body." The Senate received the Bill on December 23, 2019, and has thirty days to review it. It can either adopt it, return it to the Sjem with amendments, or reject it completely.

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6. Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL (United Nations)

<https://www.ohchr.org/Documents/Countries/IQ/UNAMI_Report_HRAdministrationJustice_Iraq_28January2020.pdf>

On January 28, 2020, the United Nations Assistance Mission for Iraq (UNAMI) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) published a joint report on trials of individuals associated with the Islamic State of Iraq and Levant (ISIL) which took place from May 1, 2018, through October 31, 2019. According to a press release from the OHCHR, though the report generally applauds efforts to bring such individuals to trial, it expresses concerns surrounding the extent to which basic fair trial rights are respected. The Executive Summary to the report notes specific concerns relating to, inter alia: (1) ineffective assistance of counsel; (2) over-reliance on confessions; (3) the broad definition of terrorism under the applicable legal framework; and (4) the imposition of the death penalty in the context of unfair trials. The report makes a number of recommendations to the Government of Iraq and the High Judicial Council concerning the general legal and policy frameworks, compliance with fair trial standards, and the protection of human rights. The report is accompanied by annexed responses by the Government of Iraq, the High Judicial Council, and the Kurdistan Regional Government.

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