Judicial and Similar Proceedings

1. Parillo v. Italy (European Court of Human Rights – August 27, 2015)
<http://hudoc.echr.coe.int/eng?i=001-157263>

On August 27, 2015, the European Court of Human Rights (the Court) ruled in *Parillo v. Italy* that a ban prohibiting a woman from donating embryos resulting from *in vitro* fertilization to scientific research was not a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights. The Court found Article 8 applicable to the facts of the case because "the applicant's ability to exercise a conscious and considered choice regarding the fate of her embryos concerns an intimate aspect of her personal life and accordingly relates to her right to self-determination," however, the Court focused on the "necessity of the measure in a democratic society" and found that Italy enjoyed a wide "margin of appreciation" in regulating these issues. The Court noted that the case "raises sensitive moral or ethical issues" and held that a "wide margin of appreciation" for Italy was appropriate because "there is no European consensus on the subject." The Court also addressed Article 1 of Protocol No. 1 to the Convention and held that with regard "to the economic and pecuniary scope of that Article, human embryos cannot be reduced to 'possessions' within the meaning of that provision." The Court in this case was also "called upon for the first time to rule on this issue."

2. Avendano-Hernandez v. Lynch (U.S. 9th Circuit Court of Appeals – September 4, 2015)
<http://cdn.ca9.uscourts.gov/datastore/opinions/2015/09/03/13-73744.pdf>

On September 4, 2015, the U.S. Court of Appeals for the Ninth Circuit (the Court) held that the United Nations Convention against Torture (CAT) protected a transgender immigrant from deportation to Mexico. Edin Avendano-Hernandez, a transgender woman from Mexico, had petitioned the Board of Immigration Appeals (BIA) to withhold her removal to Mexico based on the physical and sexual abuse by police and military officers she experienced there. Regarding the CAT claim, the Court disagreed with the BIA's decision that Avendano-Hernandez had failed to demonstrate that she was at risk of facing torture upon her return to Mexico, noting that "[t]orture is defined, in part, as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . for any reason based on discrimination of any kind'" and concluding that "[r]ape and sexual abuse due to a person's gender identity or sexual orientation, whether perceived or actual, certainly rises to the level of torture for CAT purposes." The Court found that Avendano-Hernandez provided credible testimony that she was sexually assaulted by police and military officers in uniform, thereby proving that upon her return to Mexico "she is more likely than not to be tortured . . . by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." The Court also found that the BIA's finding that Mexican laws protecting gay and lesbian citizens was sufficient protection was flawed "because it mistakenly assumed that these laws would also benefit Avendano-Hernandez, who faces unique challenges as a transgender woman" and was therefore "based on its factual confusion as to what constitutes transgender identity."

3. Chevron Corp. v. Yaiguaje (Supreme Court of Canada – September 4, 2015)
<http://scc-csc.lexum.com/scc-csc/scc-csc/en/15497/1/document.do>

On September 4, 2015, the Supreme Court of Canada (the Court) decided that villagers from Ecuador can enforce a $9.5 billion judgment against the Chevron Corporation through its Canadian subsidiary, Chevron Canada. In 2003, the villagers instituted legal proceedings against Texaco, which has since merged with Chevron, alleging that their commercial activities had caused "extensive environmental pollution that has, in turn, disrupted the lives and jeopardized the futures of its residents." An Ecuadorian court found for the villagers in 2011, awarding $17.2 billion; a judgment which was later halved by an appellate court. After Chevron refused to acknowledge the trial and the judgment, arguing it does not possess assets in Ecuador, the villagers filed suit against one of Chevron's subsidiaries in Canada. Chevron defended this suit alleging that the Canadian courts lacked jurisdiction because Chevron had no "real and substantial connection" to the Ontario court,

https://doi.org/10.5305/intelegamate.54.5.0955 Published online by Cambridge University Press

which it argued exists only "if the defendant has assets in Ontario, or if there is a reasonable prospect of his or her having assets in Ontario in the future." The Court refused this approach, stating that "Canadian courts, like many others, have adopted a generous and liberal approach to the recognition and enforcement of foreign judgments" and that in order to recognize and enforce a foreign judgement "the only prerequisite is that the foreign court had a real and substantial connection with the litigants or with the subject matter of the dispute, or that the traditional bases of jurisdiction were satisfied." It further held that "in actions to recognize and enforce foreign judgments within the limits of the province, it is the act of service on the basis of a foreign judgment that grants an Ontario court jurisdiction over the defendant," which the plaintiffs had satisfied by serving Chevron Canada at its Mississauga, Ontario office. The Court also addressed the issue of comity, which "has consistently been found to underlie Canadian recognition and enforcement law" and "militates in favour of recognition and enforcement" of another state's legitimate judicial actions.

4. Jobcenter Berlin Neukölln v. Alimanovic (Court of Justice of the European Union – September 15, 2015)
<http://curia.europa.eu/juris/liste.jsf?num=C-67/14>

On September 15, 2015, the Grand Chamber of the Court of Justice of the European Union (the Court) ruled that member states of the European Union may exclude Union citizens who go to that state in search of a job from certain non-contributory social security benefits without violating the principle of equal treatment. The Alimanovic family, Swedish citizens originally from Bosnia, moved to Germany in 2010. After their arrival, two family members had held several temporary jobs lasting less than one year and had received unemployment and subsistence benefits from 2011 to 2012 when German authorities stopped the payments, arguing these allowances were "social assistance" not intended for foreign job seekers whose right of residence arose solely out of the search for employment. The Court agreed, finding that "the predominant function of the benefits at issue in the main proceedings is in fact to cover the minimum subsistence costs necessary to lead a life in keeping with human dignity" and therefore they "cannot be characterised as benefits of a financial nature which are intended to facilitate access to the labour market of a Member State." Because the Court characterized the benefits in question as social assistance, the Free Movement of Citizens Directive (Directive) applies, which grants EU citizens equal treatment with nationals of the host member state in only two circumstances, neither of which applies to the Alimanovic family. The Court further clarified that the Directive contains a gradual design for the determination of worker status and "itself takes into consideration various factors characterising the individual situation of the applicant for social assistance" thus relieving the member state from carrying out an individualized assessment.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Memorandum of Understanding on Financial Assistance (Greece and European Commission – August 19, 2015)
<http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/pdf/01_mou_20150811_en.pdf>

On August 19, 2015, the European Commission and Greece signed a Memorandum of Understanding (MoU) relating to financial assistance for Greece from the European Stability Mechanism (ESM) in exchange for fiscal reforms. The ESM "will be able to disburse up to EUR 86 billion in loans over the next three years, provided that Greek authorities implement reforms to address fundamental economic and social challenges, as specified in the MoU." Greece also signed a Financial Assistance Facility Agreement with the ESM to detail the terms of the loan. Within the MoU, the policies for implementing the reform agenda in Greece are divided into four pillars; 1) "Restoring fiscal sustainability," 2) "Safeguarding financial stability," 3) "Growth, competitiveness and investment," and 4) "A modern state and public administration."

2. Serbia and Kosovo Agreements Regarding Normalization of Relations (August 25, 2015)
<http://eeas.europa.eu/statements-eeas/2015/150825_02_en.htm>

On August 25, 2015, the Prime Ministers of Kosovo and Serbia agreed to finalize four agreements regarding the normalization of relations between Belgrade and Pristina at a European Union-facilitated dialogue. High

https://doi.org/10.5305/intelegamate.54.5.0955 Published online by Cambridge University Press

Representative/Vice President Federica Mogherini issued a statement regarding the successful negotiations, noting that Serbia and Kosovo agreed to "finalize implementation arrangements of four key agreements: on energy, telecoms, establishment of the Association/Community of Serb majority municipalities as well as the Freedom of Movement/Mitrovica Bridge." The plan for the municipalities in Kosovo with a Serb majority creates a new Association/Community that will have its own Assembly and President, as well as its own flag, and will operate "in accordance with Kosovo law." The Association/Community will be responsible for areas such as economic development, education, health care and entering into cooperation agreements with other domestic and international municipalities.

3. Agreement on the Resolution of the Conflict in South Sudan (August 28, 2015)
<https://drive.google.com/a/asil.org/file/d/0B5FAwdVtt-gCelBQZVAxbjhUc1FmSHo3VnNaT09Ldm1GNEhz/view>

On August 28, 2015, the UN Security Council welcomed the signatures of South Sudan's President Kiir and Riek Machar Teny, who signed on behalf of the Sudan People's Liberation Movement/Army in Opposition, on the Agreement on the Resolution of the Conflict in South Sudan. The Security Council stated that the signing of the agreement is "the first step in reversing the difficult political and economic situation, and humanitarian, and security catastrophe resulting from this crisis, calls upon the parties, with support from the United Nations and international community, to fully implement the Agreement." The Agreement establishes a "Transitional Government of National Unity" which will include representatives of all parties to the conflict and will oversee the implementation of a ceasefire within seventy-two hours of signature of the Agreement. The transitional government will further have control over the natural resources of the country and will oversee the implementation of the Petroleum Revenue Management Act (2012). The Agreement also includes provisions for the establishment of a "Commission for Truth, Reconciliation and Healing" as a "critical part of the peacebuilding process in South Sudan, to spearhead efforts to address the legacy of conflicts, promote peace, national reconciliation and healing."

4. Resolution on Basic Principles on Sovereign Debt Restructuring Processes (UN General Assembly – September 10, 2015)
<http://unctad.org/meetings/en/SessionalDocuments/a69L84_en.pdf>

On September 10, 2015, the United Nations General Assembly passed a resolution on the "Basic Principles on Sovereign Debt Restructuring Processes." The resolution stressed "the importance of a clear set of principles for the management and resolution of financial crises that take into account the obligation of sovereign debtors and their creditors to act in good faith and with a cooperative spirit to reach a consensual rearrangement of the debt of sovereign States." It also declared that sovereign debt restructuring processes should be guided by a set of nine Basic Principles and encouraged "Member and observer States, competent international organizations, entities and other relevant stakeholders to support and promote the Basic Principles." The Independent Expert on the effects of foreign debt and human rights, Juan Pablo Bohoslavsky, stated that "[t]he set of principles on debt restructuring passed today by the UN General Assembly reflects customary law and general principles of international law to a large extent and, as such, are legally binding."

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