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BRIEFLY NOTED*

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JUDICIAL AND SIMILAR PROCEEDINGS

1. Missouri v. China (U.S. Court of Appeals for the Eighth Circuit – January 10, 2024)

<https://tlblog.org/wp-content/uploads/2024/01/Missouri-v.-PRC-8th-Cir.pdf>

This is the latest judgment in a case filed in 2020 by the state of Missouri against several named defendants and the Chinese Communist Party (CCP) for allegedly allowing COVID-19 to spread, engaging in a coverup of the virus, and hoarding PPE, such as high-quality masks, which caused the virus to spread further. In July 2022, the Eastern District of Missouri dismissed the complaint, finding that the Foreign Sovereign Immunities Act (FSIA) applied to all the defendants in the case, including the CCP and that neither the commercial activity exception or the noncommercial torts exception applied. The Court of Appeals affirmed, barring one difference. The Court of Appeals agreed with the lower court that the FSIA applied to all the defendants and that neither exception raised applied. However, it reversed the lower court's dismissal of the PPE hoarding claim, finding that that the taking over of "mask-producing factories and buying up a substantial portion of the world's supply of personal-protective equipment" was commercial in nature.

It should be noted that a nearly identical case was filed against China in the U.S. District Court for the Southern District of Mississippi on May 12, 2020 (Civil No. 1:20-cv-168-TBM-RPM). On March 1, the Court declined to issue a default judgment against China, finding that Mississippi's complaint "does not provide a proposed judgment or specify at all as to what it actually wants." The Court also noted that it did not address the judgment in the Missouri case, discussed above.

2. Al-Hawsawi v. Lithuania (European Court of Human Rights – January 16, 2024)

<https://hudoc.echr.coe.int/fre?i=001-230250>

On January 16, 2024, the ECtHR published its judgment in the above case finding Lithuania liable for helping the United States torture a Saudi Arabian man at a secret CIA detention site in Lithuania in 2005. The applicant was suspected of facilitating and managing the finances of al-Qaeda and he alleged that as a result of being subjected to enhanced interrogation techniques, he experienced many health issues, including hearing loss, a degenerative disc disorder, migraines, and chronic sleep loss. The Court unanimously found Lithuania liable of violating Article 3 (torture and inhuman and degrading treatment), Article 5 (right to liberty and security), Article 8 (right to respect for private life), and Article 13 (right to an effective remedy) in conjunction with Articles 3, 5, and 8 in relation to his ill-treatment. It also found violations of Article 6(1) (right to a fair trial within a reasonable time), and Articles 2 (right to life) and 3 taken together with Article 1 of Protocol No. 6 (abolition of the death penalty), because Lithuania assisted in transferring him from its territory despite the risk that he could face the death penalty in U.S. military proceedings. The Court ordered EUR 200,000 in nonpecuniary damages.

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