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DOI:10.1017/ilm.2020.8

BRIEFLY NOTED

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JUDICIAL AND SIMILAR PROCEEDINGS

1. Bakalian v. Central Bank of the Republic of Turkey (U.S. Court of Appeals for the Ninth Circuit – August 8, 2019)

<http://cdn.ca9.uscourts.gov/datastore/opinions/2019/08/08/13-55664.pdf>

On August 8, 2019, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Bakalian v. Central Bank of Republic of Turkey*, Case No. 13-55664. In this case, the Ninth Circuit affirmed the district court's dismissal of plaintiffs' claims seeking compensation from the Republic of Turkey and two Turkish national banks for lands that they claim were unlawfully confiscated from their ancestors during what the Court refers to as the Armenian Genocide of 1915–1923. In 2006, California adopted a statute extending the statute of limitations for claims arising out of the Armenian Genocide to December 31, 2016. Thus, the claims filed by the plaintiffs in 2010 were not time-barred under the statute; however, the panel found that since the Court had previously found the statute to be unconstitutional, no statute existed to extend the statute of limitations and therefore the claims were time-barred. The panel held that since the claims were plainly time-barred, the Court need not address legal questions posed regarding Foreign Sovereign Immunities Act jurisdiction.

2. CMC Muratori Cementisti CMC Di Ravenna SOC. Coop.; CMC Muratori Cementisti CMC Di Ravenna SOC. Coop. A.R.L. Maputo Branch; and CMC Africa Austral, LDA v. Republic of Mozambique (ICSID – October 24, 2019)

<http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C6507/DS12973_En.pdf>

On October 24, 2019, the International Centre for Settlement of Investment Disputes (ICSID) published the award in Case No. ARB/17/23, *CMC Muratori Cementisti CMC Di Ravenna SOC. Coop.; CMC Muratori Cementisti CMC Di Ravenna SOC. Coop. A.R.L. Maputo Branch; and CMC Africa Austral, LDA v. Republic of Mozambique*. The case involved a bilateral investment treaty (BIT) dated December 14, 1998, between Italy and Mozambique. The dispute relates to the reconstruction of part of the north-south highway in Mozambique. The Claimants entered into an agreement with Mozambique to undertake the work, but, after its partial completion, the Claimants attempted to obtain additional compensation for the work that was done. Unable to come to agreement, the Claimants commenced arbitration proceedings in 2017 arguing that Mozambique's failure to compensate them properly breached certain obligations in the BIT. ICSID found in favor of the Respondent, identifying no breaches.

3. Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt v. Hungary (ICSID – November 13, 2019)

<http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C6587/DS13092_En.pdf>

On November 13, 2019, ICSID rendered its award in the case of *Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt v. Hungary*. The dispute arose out of changes to Hungarian land law which "precluded lessees of State-owned agricultural land plots [like the Claimants] from exercising statutory pre-lease rights in cases where the National Land Agency. . . leased the land out by way of a tender." Under the previous land law, the Claimants (including Magyar Farming Company Ltd., incorporated in the United Kingdom (UK)) had a lease agreement with Hungary's State-owned asset management agency which gave the Claimants a right to be notified by Hungary of an intention to sell the land upon the expiration of the lease and of any purchase offers from third parties that the state intended to accept so that the Claimants could enter into a renewed lease agreement with the third party buyer. Hungary acknowledged the existence of the Claimants' pre-lease rights, but argued that such rights could not be expropriated. ICSID disagreed and held that Hungary breached its bilateral investment treaty with the UK by expropriating the Claimants' investment without compensation

https://doi.org/10.1017/ilm.2020.8 Published online by Cambridge University Press

and ordered Hungary to pay EUR 7,148,824, plus interest, in compensation for that expropriation and to reimburse the Claimants for their legal costs.

4. G.B. and Others v. Turkey (European Court of Human Rights – October 17, 2019)

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-196612%22]}>

On October 17, 2019, a Chamber of the European Court of Human Rights (ECtHR) ruled unanimously in *G.B. and Others v. Turkey* that Turkey violated European Convention on Human Rights (ECHR) Article 3 (prohibition on human and degrading treatment), Article 13 (right to an effective remedy), and Articles 5(1) & (4) (right to liberty and security & right to have lawfulness of detention decided speedily by a court). According to a press release issued by the Court, the case involved the four-month detention of a mother and her three children prior to their deportation from Turkey. In particular, the "Court found that the Government had failed to disprove the applicants' allegations that they had been detained in overcrowded dormitories, had rarely been allowed to go outside for fresh air, had constantly been exposed to cigarette smoke from other detainees and had not been given suitable food for children." These conditions were held by the Court to be "manifestly adverse even for adults." The Court awarded non-pecuniary damages in the amounts of EUR 2,250 for the mother, EUR 20,000 for each of the children, and EUR 5,500 in costs and expenses.

5. J.D. and A. v. The United Kingdom (European Court of Human Rights – October 24, 2019)

<http://hudoc.echr.coe.int/eng?i=001-196897>

On October 24, 2019, the First Section of the European Court of Human Rights (ECtHR) ruled in *J.D. and A. v. the United Kingdom* that a reduction in housing benefits based on occupancy violated Article 14 (prohibition of discrimination) of the ECHR and Article 1 of its Protocol No. 1 (protection of property). A press release issued by the Court explains that the applicant in the case challenged UK housing benefits rules that require a reduction in housing benefits for under-occupation of social housing. The applicant, a victim of violent sexual crime, harassment, and stalking by a former partner, was provided with housing under the United Kingdom's Sanctuary Scheme, which adapts social housing specifically for victims of domestic violence by, for example, building in panic rooms. The housing that the applicant and her son reside in is a three-bedroom property with a panic room. However, because the property is built for three occupants, the applicant's housing benefit was reduced. She claimed that the rules unlawfully discriminate against victims of domestic violence. The Court found that treating the applicant the same as others subject to the benefits rules was disproportionate because it did not take into consideration the purpose of the Sanctuary Scheme, which is to allow victims of gender-based violence to stay in their homes. A second applicant in the case, J.D., was unsuccessful on her claim, which did not involve the same set of factual circumstances. The Court ordered the UK to pay the successful applicant EUR 10,000 for non-pecuniary damage.

6. Z.A. and Others v. Russia (Grand Chamber – European Court of Human Rights – November 21, 2019)

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-198811%22]}>

On November 21, 2019, the Grand Chamber of the European Court of Human Rights issued its judgment in *Z.A. and Others v. Russia*, a case involving prolonged detention in an airport transit zone in Moscow. According to a press release from the Court, the case involved the detention of four men, three of whom were held for between five and seven months, and the fourth who was detained for one year and nine months. The men challenged their detention under Articles 5(1) (right to liberty) and 3 (prohibition of inhuman or degrading treatment) of the ECHR. The Grand Chamber unanimously held that there had been a violation of both Convention articles. Article 5(1) was violated because, among other reasons, there was no domestic legal basis for their detention in a transit zone. Article 3 was violated because of "the appalling material conditions" (para. 129) in the transit zone, where they were forced to sleep in the constantly-lit boarding area of the airport, had no possibility to clean themselves, and lived on emergency UNHCR rations.

https://doi.org/10.1017/ilm.2020.8 Published online by Cambridge University Press

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Trade Agreement Between the United States of America and Japan (Office of the U.S. Trade Representative – October 8, 2019)

<https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations/us-japan-trade-agreement-text>

On October 8, 2019, the United States and Japan signed an agreement to ease tariffs on agricultural and industrial products. A press release from the U.S. Department of Agriculture indicates that the agreement "will provide America's farmers and ranchers enhanced market access in our third largest agricultural export market" and "enable American producers to compete more effectively with countries that currently have preferential tariffs in the Japanese market." Both parties must now take measures to implement the agreement.

2. Agreement on Interim Appeal Arbitration Between the European Union and Norway (European Commission – October 21, 2019)

<https://trade.ec.europa.eu/doclib/docs/2019/october/tradoc_158394.pdf>

The European Union (EU) and Norway announced on October 21, 2019, the signing of an agreement on interim dispute resolution in the event of trade disputes under the framework of the World Trade Organization (WTO). The agreement is the second of its kind, the first having been established between the EU and Canada earlier this year. The agreements are an effort to address the long-standing blockage of appointments to the WTO Appellate Body, and to ensure the dispute resolution mechanisms are in place, should the WTO Appellate Body cease functioning completely.

3. Annual Report 2018–19 (International Court of Justice – October 30, 2019)

<https://www.icj-cij.org/files/annual-reports/2018-2019-en.pdf>

The International Court of Justice (ICJ) published its 2018–19 Annual Report on October 30, 2019. The Report notes that the workload of the Court has "grown considerably," and that "the Registry has sought to maintain a high level of efficiency and quality in its work." During the period under review, the ICJ delivered judgments in three cases, issued one Advisory Opinion, and handed down sixteen orders. As of July 31, 2019, there were sixteen cases on the Court's List. The Report highlighted the "crucial role" the ICJ plays in maintaining and promoting the rule of law and noted that "[e]verything the Court does is aimed at promoting and reinforcing the rule of law," even down to ensuring that its judgments are widely publicized and clear.

4. Presidential Statement on Guinea-Bassau (U.N. Security Council – November 4, 2019)

<https://undocs.org/S/PRST/2019/13>

On November 4, 2019, The United Nations Security Council adopted Presidential Statement No. 13 on Guinea-Bissau. The Council expressed "full support" for the Economic Community of West African States (ECOWAS) and African Union Communiques on developments in Guinea-Bissau from October 23 and 30 (respectively), and condemned the recent violence in Guinea-Bissau that resulted in the death of one civilian and the injury of several others. The Council urged the political actors in the state "to show upmost restraint, refrain from all forms of violence or incitement to hatred, and to resort to dialogue" to resolve their differences.

https://doi.org/10.1017/ilm.2020.8 Published online by Cambridge University Press