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BRIEFLY NOTED

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Judicial and Similar Proceedings

1. Situation on the Registered Vessels of the Union of Comoros, the Hellenic Republic and the Kingdom of Cambodia (International Criminal Court – September 2, 2019)

<https://www.icc-cpi.int/CourtRecords/CR2019_04886.PDF>

On September 2, 2019, the International Criminal Court (ICC) Appeals Chamber delivered its judgment in the *Situation on the Registered Vessels of the Union of Comoros, the Hellenic Republic and the Kingdom of Cambodia* case, Case No. ICC-01/13 OA 2, and rejected the appeal filed by the ICC Office of the Prosecutor (OTP) of the ICC Pre-Trial Chamber I's decision on the November 15, 2018 "Application for Judicial Review by the Government of the Union of Comoros." As noted in the ICC's press release, "a referral was received by the Office of the Prosecutor from the authorities of the Union of the Comoros, a State Party to the Rome Statute, in relation to an attack on 31 May 2010 by the Israeli Defence Forces on the Humanitarian Aid Flotilla bound for the Gaza strip. On 6 November 2014, the Prosecutor issued her decision not to investigate the attack. On 16 July 2015, Pre-Trial Chamber I, by majority, requested the Prosecutor to reconsider the 6 November 2014 decision not to investigate the attack. Subsequently, on 29 November 2017 the Prosecutor filed her decision, which she considered to be final, reaffirming her previous decision not to investigate the attack. On 15 November 2018, Pre-Trial Chamber I directed the Prosecutor to reconsider her decision of 6 November 2014 not to investigate the attack in light of the specific directions of the Pre-Trial Chamber's 16 July 2015 decision. The Prosecutor then appealed this decision." The Appeals Chamber confirmed the Pre-Trial Chamber's decision, directing that the OTP must reconsider its decision regarding the Comoros referral by December 2, 2019. The Appeals Chamber found that the Pre-Trial Chamber "did not err in reviewing whether a decision of a Prosecutor that she considered to be 'final' subsequently to a first request for reconsideration does actually amount . . . to a proper 'final decision.'" The Appeals Chamber did maintain that the "ultimate decision" regarding whether or not to initiate an investigation remains with the OTP.

2. Pryanishnikov v. Russia (European Court of Human Rights – September 10, 2019)

<http://hudoc.echr.coe.int/eng?i=001-195605>

On September 10, 2019, the European Court of Human Rights (ECtHR) issued its judgment in the *Pryanishnikov v. Russia* case, Application No. 25047/05. In this case, the applicant, Sergey Viktorovich Pryanishnikov, a Russian national, challenged the refusal by domestic courts to grant him a film reproduction license because he was suspected of producing or distributing pornography. Pryanishnikov is the producer of erotic films and owns the copyright to over 1,500 such films. He applied to the Russian Ministry of Press, Broadcasting and Mass Media in 2003 for a film reproduction license and it was denied because the Ministry claimed that Pryanishnikov was "involved in investigative measures concerning the illegal production, advertising and distribution of erotic and pornographic material and films," which is an offense under the Russian Criminal Code. Pryanishnikov challenged the decision in the Russian Commercial Court of Moscow, Appellate Court, and Court of Cassation, all of which upheld the Ministry's refusal to grant the license. The charges of producing/distributing pornography were dropped. The ECtHR found that "the refusal to issue a film reproduction license had amounted to an interference with Mr Pryanishnikov's freedom of expression." The interference had been prescribed by law and had "pursued legitimate aims" for the purposes of Article 10 § 2: protecting morals and the rights of others, in particular children. When determining whether the interference was also "necessary in a democratic society," the Court established that the domestic judgments—in so far as they relied on a suspicion regarding Mr Pryanishnikov's involvement in producing and distributing pornography—had been "based on assumptions rather than reasoned findings of fact." The ECtHR observed that

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"the domestic courts had not weighed the impact which the refusal of a film reproduction licence would have on Mr Pryanishnikov's ability to distribute all the films for which he had distribution certificates or on his freedom of expression in general." The courts had therefore failed to recognise that the case involved a conflict between the right to freedom of expression and the need to protect public morals and the rights of others, and had failed to perform a balancing exercise. The Court considered that such a far-reaching restriction on his freedom of expression had not been justified. There had been therefore no reasonable relationship of proportionality between the means employed and the aim sought to be achieved. Accordingly, there had been a violation of Article 10 of the Convention.

3. Majid Goa (alias Vedatus) v. United Republic of Tanzania (African Court of Human and Peoples' Rights – September 27, 2019)

<http://www.african-court.org/en/index.php/56-pending-cases-details/888-app-no-025-2015-majid-goa-vedatus-v-united-republic-of-tanzania-details>

On September 27, 2019, the African Court on Human and Peoples' Rights announced its verdict in *Majid Goa alias Vedatus v. United Republic of Tanzania*. The Applicant had been convicted of rape and sentenced to 30 years' imprisonment. He challenged his conviction, arguing that Tanzanian authorities had failed to properly consider the evidence, ignored his alibi defense, and denied him free legal assistance during the trial and appeal. The Court dismissed the first two allegations, but did find that the Applicant's right to free legal assistance under Article 7(1)(c) of the African Charter was violated by the Respondent State. The Applicant was awarded TZS 300,000 (approx. $130).

4. Pastörs v. Germany (European Court of Human Rights – October 3, 2019)

<http://hudoc.echr.coe.int/eng?i=001-196148>

On October 3, 2019, the Fifth Section of the European Court of Human Rights gave its judgment in *Pastörs v. Germany*. A press release issued by the Court stated that the case concerned untrue statements intentionally made to defame Jewish people. The Court held that such statements are not protected by Article 10 of the European Convention on Human Rights (on freedom of expression) and are, in fact, "contrary" to its values. The Court further held that, "the . . . statements affected the dignity of the Jews to the point that they justified a criminal response" at the national level.

5. L.P. and Carvalho v. Portugal (European Court of Human Rights – October 8, 2019)

<http://hudoc.echr.coe.int/fre-press?i=003-6528113-8623459> (in French only)

On October 8, 2019, the European Court of Human Rights (ECtHR) unanimously held that there had been a violation by two judges of the High Council of the Judiciary in Portugal of the applicants' right to freedom of expression in Article 10 of the European Convention on Human Rights. According to a press release from the ECtHR, the case of *L.P. and Carvalho v. Portugal* involved two lawyers who had complained about improper, and in one case, defamatory and discriminatory, conduct by the judges in the context of two cases. In response, one judge successfully lodged a complaint for defamation and the other judge succeeded in a civil action alleging that the lawyer had "knowingly lodged an unfounded criminal complaint" against the judge. On appeal to the ECtHR, the Strasbourg Court held that, although the national decisions finding the applicants liable pursued two legitimate aims, the extent of the interference with the right to freedom of expression was disproportionate and unnecessary. The Court awarded EUR 16,093.42 in pecuniary damages, and EUR 11,612 in costs, to the two lawyers.

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RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Recommendation, "Lives Saved. Rights Protected. Bridging the Protection Gap for Refugees and Migrants in the Mediterranean" (Council of Europe – June 2019)

<https://rm.coe.int/lives-saved-rights-protected-bridging-the-protection-gap-for-refugees-/168094eb87>

In June 2019, the Council of Europe released its Recommendation regarding the "protection of refugees, asylum-seekers and migrants travelling by sea," titled "Lives Saved. Rights Protected. Bridging the Protection Gap for Refugees and Migrants in the Mediterranean." The Recommendation sets forth that "states have clear obligations to aid any person found in distress at sea, to rescue people in distress and to ensure that their rights—including the right to life and to protection from *refoulement*—are upheld." The Council of Europe Commissioner for Human Rights put forward this Recommendation regarding "how to help member states make these rights practical and effective." The Recommendation noted that Council of Europe members have "adopted tougher and more restrictive laws and measures to handle the attempted crossing of refugees and migrants via the Central Mediterranean route" and that the Recommendation "aims at identifying the deficiencies of this approach, and at helping member states to reframe their response according to human rights standards." The Recommendation focuses on five main areas of action: "ensuring effective search and rescue coordination; guaranteeing the safe and timely disembarkation of rescued people; co-operating effectively with NGOs; preventing human rights violations while co-operating with third countries; and providing accessible safe and legal routes to Europe."

2. Report Approving Friendly Settlement Agreement Regarding Forced Disappearance of Gerson Jairzinho Gonzalez Arroyo (Inter-American Commission on Human Rights – August 6, 2019)

<http://www.oas.org/en/iachr/decisions/2019/COSA11144EN.pdf>

On August 6, 2019, the Inter-American Commission on Human Rights (IACHR) issued Report No. 109/19 approving the friendly settlement agreement in Case 11,144, Gerson Jairzinho González Arroyo. As noted in the press release, the IACHR received a petition on April 7, 1993, "alleging that the Republic of Colombia bore international responsibility for the forced disappearance of Gerson Jairzinho González Arroyo on November 20, 1992 in the city of Sincelejo, in the department of Sucre, and for the lack of due diligence of judicial authorities in charge of investigating those events and punishing the people responsible for them." On December 5, 2016, the parties signed a friendly settlement agreement in which Colombia agreed to take the following measures: "(1) develop a plan to search for the victim's remains; (2) request a review of the legal decisions that led to the preclusion on the investigation into these events and to the acquittal of one suspect; (3) hold an event to publicly acknowledge responsibility; (4) unveil two plaques in memory of the victim, in agreement with his family; (5) dedicate a remembrance site featuring the victim's photograph and story; (6) take educational measures to prevent these events from happening again in the future; (7) grant financial aid to support the education of the victim's siblings; (8) adopt measures to support health recovery for the victim's relatives; and (9) grant financial compensation, in accordance with Law 288 of 1996." In its report, the Commission noted that there has been substantial compliance with the friendly settlement agreement (full compliance with five measures, partial compliance with one, and progress on the remaining measures) and "observed progress concerning justice." The Commission will continue to monitor the four measures that are still being implemented.

3. Report Regarding Education of Refugee Children (UNHCR – August 30, 2019)

<https://www.unhcr.org/steppingup/wp-content/uploads/sites/76/2019/09/Education-Report-2019-Final-web-9.pdf>

On August 30, 2019, the UN High Commissioner for Refugees (UNHCR) issued a report entitled "Stepping Up: Refugee Education in Crisis." In the report, the UNHCR stated that of the world's 7.1 million school-age

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refugee children, over half (3.7 million) are not receiving an education. The UNHCR reported that education enrollment for refugees is approximately 63% at the primary school level, 24% at the secondary school level, and 3% at the higher education level, whereas the enrollment numbers globally are 91%, 84%, and 37%, respectively. Some of the barriers cited by the report include shortages of schools and teachers and overburdened classrooms. The UNHCR announced a new initiative to improve secondary education opportunities for refugees following the success of pilot projects in Kenya, Rwanda, Uganda, and Pakistan since 2017.

4. Report on the Situation of Human Rights in Yemen (The Group of Eminent International and Regional Experts in Yemen – September 3, 2019)

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A_HRC_42_CRP_1.PDF>

On September 3, 2019, the Group of Eminent International and Regional Experts in Yemen released its "Report on the Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014," UN Document A/HRC/42/CRP.1*. The Report found "reasonable grounds to believe that the parties to the conflict in Yemen are responsible for an array of human rights violations and violations of international humanitarian law. Some of these violations are likely to amount to war crimes." Further, it presented "details of the findings by the Group of Experts with regard to the practical impact of these violations on the lives of ordinary Yemenis, which has been immense and wide ranging. Shelling and airstrikes create the sense that there is no safe place to hide from the fighting. Landmines left by the Houthis kill and maim people long after battles have subsided. The blockade, siege-like tactics, attacks impacting objects essential to the survival of the population and impediments to the delivery of aid deprive the population of necessary items amidst the unprecedented humanitarian crisis. People are arrested and detained arbitrarily, disappeared, and subjected to torture and ill-treatment, including sexual violence. The population lives in fear of being detained or otherwise targeted for any perceived dissent. Parties to the conflict actively recruit children, including through force, and restrict the work of activists, journalists, human rights defenders and humanitarian workers." The Group of Experts identified "individuals who may bear responsibility for violations and possible crimes" and communicated those names confidentially to the High Commissioner for Human Rights. The Report lists a number of recommendations, including, inter alia: (1) ceasing all violence against civilians; (2) ceasing perpetration of sexual and gender-based violence; (3) allowing for the unimpeded passage of humanitarian relief; (4) ceasing the recruitment of children in the armed conflict; and (5) ending impunity and ensuring accountability for "violations of international human rights law, international humanitarian law, and crimes under international law."

5. Political Declaration, "Universal Health Coverage: Moving Together to Build a Healthier World" (U.N. General Assembly – September 23, 2019)

<https://www.un.org/pga/73/wp-content/uploads/sites/53/2019/05/UHC-Political-Declaration-zero-draft.pdf>

On September 23, 2019, the United Nations General Assembly adopted the first Political Declaration on healthcare, titled "Universal Health Coverage: Moving Together to Build a Healthier World". The Declaration is aimed at reaffirming the commitment of U.N. member states to "achieve universal health coverage by 2030" in recognition that health is a key part of implementing the 2030 Agenda for Sustainable Development. The Declaration commits states to a number of actions relating to promoting active and healthy lifestyles, affordable health financing policies, high-quality and affordable access to medicines, vaccines, and health technologies, and mainstreaming general, equity, and human rights in terms health policy design and access to healthcare. World leaders must now develop a plan for implementation and financing to reach their goal.

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