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BRIEFLY NOTED
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Judicial and Similar Proceedings

1. Osmanoğlu and Kocabaş v. Switzerland (European Court of Human Rights – January 10, 2017)

<http://hudoc.echr.coe.int/eng?i=001-170436>

On January 10, 2017, the European Court of Human Rights (ECtHR) ruled in *Osmanoğlu and Kocabaş v. Switzerland* that Switzerland did not violate the right to freedom of religion enshrined in Article 9 of the European Convention on Human Rights (ECHR) when it fined the parents of two Muslim girls for refusing to send their children to mandatory mixed gender swimming activities at their school. The applicants were two Swiss nationals with joint Turkish citizenship living in Basle, Switzerland. The Court "found that by giving precedence to the children's obligation to follow the full school curriculum and their successful integration over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters on religious grounds, the domestic authorities had not exceeded the considerable margin of appreciation afforded to them in the present case."

2. Hutchinson v. the United Kingdom (European Court of Human Rights – January 17, 2017)

<http://hudoc.echr.coe.int/eng?i=001-170347>

On January 17, 2017, the European Court of Human Rights ruled in *Hutchinson v. the United Kingdom* that whole life sentences in the United Kingdom are compatible with Article 3 of the European Convention on Human Rights (ECHR). The case concerned a man serving a whole life sentence for murdering three of his family members and raping another. The man alleged "that his sentence amounted to inhuman and degrading treatment as he had no hope of release," in violation of Article 3 of the ECHR due to discrepancies in U.K. law regarding review of such sentences. The Court stated that whole life sentences are not in violation of Article 3 if there exists "both a prospect of release for the prisoner and a possibility of review of their sentence." The court determined that a recent U.K. ruling had dispelled the lack of clarity regarding the scope and manner of the review of sentences as well as the obligation of the Secretary of State to release prisoners when their whole life sentence can no longer be justified.

3. Toshiba Corp. v Commission (Court of Justice of the European Union – January 18, 2017)

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=186866&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=511116>

On January 18, 2017, the Court of Justice of the European Union ruled in *Toshiba Corp. v Commission* to uphold fines against Toshiba and Panasonic totaling €1.47 billion for their participation in an illegal cartel of television components. In a prior decision the General Court "annulled the fine of €28 048 000 imposed on Toshiba individually and reduced from €86 738 000 to €82 826 000 the fine imposed jointly and severally on Toshiba and Panasonic." Toshiba sought to have the Court set aside that judgment completely on appeal, however. The Court denied the appeal and upheld the reasoning of the General Court that Toshiba and Panasonic maintained unlawful influence over their joint subsidiary that produced the television components at issue.

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4. ACLU v. Department of Defense (U.S. District Court of the Southern District of New York – January 18, 2017)

<https://www.aclu.org/sites/default/files/field_document/2017.1.18_dkt_582_order_and_opinion_granting_sj_to_plaintiff.pdf>

On January 18, 2017, the U.S. District Court of the Southern District of New York ruled in *ACLU v. Department of Defense* that the Department of Defense must release a collection of photographs taken at the Abu Ghraib prison and other military detention facilities in Iraq and Afghanistan by U.S. Army personal between 2003 and 2005. In support of his ruling, the judge stated that "the executive has failed to articulate the reasons supporting its conclusion that release of the photographs would endanger Americans deployed abroad." The litigation surrounding this case began thirteen years ago through ACLU's Freedom of Information Act request for documents that included the photographs at issue.

5. R v. Secretary of State for Exiting the European Union (U.K. Supreme Court – January 24, 2017)

<https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf>

On January 24, 2017, the U.K. Supreme Court ruled in *R v. Secretary of State for Exiting the European Union* that the government must put to a vote of Parliament the triggering of Article 50 of the Treaty of the European Union, which would notify the European Union of the U.K.'s intent to leave the EU. The Court reasoned that since the European Communities Act (ECA) that brought the U.K. into the EU and granted rights to British residents was implemented by Parliament, any withdrawal from the EU must also be enacted by Parliament, rather than relying on the June 2016 national referendum. The Court also noted that the statute authorizing the 2016 referendum did not specify its consequences and that "[t]he change in the law required to implement the referendum's outcome must be made in the only way permitted by the UK constitution, namely by legislation."

6. Navalnyy v. Russia (European Court of Human Rights – February 2, 2017)

<http://hudoc.echr.coe.int/eng?i=001-170655>

On February 2, 2017, a Chamber of the European Court of Human Rights ruled in *Navalnyy v. Russia* that Russian authorities repeatedly violated the human rights of Aleksey Navalnyy, an activist and political opponent of Russian President Vladimir Putin, by arbitrarily arresting him, unlawfully depriving him of liberty, and subjecting him to unfair trial. Navalnyy was arrested on two occasions in the wake of Putin's 2012 election during peaceful protests, held arbitrarily and without justification, and subjected to trials "not based on an acceptable assessment of the relevant facts, in violation of the right to a fair hearing." The court awarded Navalnyy 1,025 euros for pecuniary damage, 50,000 euros for non-pecuniary damage, and 12,653 euros in respect of costs and expenses.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Resolution 2339 (United Nations Security Council – December 31, 2016)

<http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2339(2017)>

On December 31, 2016, the United Nations Security Council passed Resolution 2339 welcoming the efforts of Russia and Turkey to end the violence in Syria and "jumpstart a political process." The Security Council also reiterated "its call on the parties to allow humanitarian agencies rapid, safe and unhindered access throughout Syria, as provided for in its relevant resolutions." The Council stated that it looked forward to the upcoming meeting in Astana, Kazakhstan, between the Syrian government and opposition groups, viewing it as "as an important part of the Syrian-led political process" and an "important step ahead of the resumption of negotiations under the auspices of the United Nations in Geneva on 8 February 2017."

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2. Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Attribution (U.S. Office of the Director of National Intelligence – January 6, 2017)

<https://www.dni.gov/files/documents/ICA_2017_01.pdf>

On January 6, 2017, the U.S. Office of the Director of National Intelligence released a report detailing a Russian campaign to influence the recent U.S. presidential elections. The report is a truncated version of a highly classified report assembled by various U.S. intelligence and law enforcement agencies. The report states that the alleged election tampering "represent[s] the most recent expression of Moscow's longstanding desire to undermine the US-led liberal democratic order" and that "these activities demonstrated a significant escalation in directness, level of activity, and scope of effort compared to previous operations." The report adds that in its assessment, the influence campaigned was ordered by Russian President Vladimir Putin.

3. Resolution 2337 (United Nations Security Council – January 19, 2016)

<http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2337(2017)>

On January 19, 2017, the United Nations Security Council passed Resolution 2337 urging "all Gambian parties and stakeholders to respect the will of the people and the outcome of the election which recognized Adama Barrow as President-elect of The Gambia and representative of the freely expressed voice of the Gambian people as proclaimed by the Independent Electoral Commission." The resolution followed turmoil in the Gambia over the defeat of former president Yahya Jammeh in general elections and his refusal to cede the office to the newly elected President Barrow.

4. Amendment to the WTO Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement (World Trade Organization – January 23, 2017)

<https://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm>

On January 23, 2017, the World Trade Organization's (WTO) amendment to the WTO Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement entered into force when member states surpassed a two-thirds threshold of required ratifications. The member states "took the decision to amend the TRIPS Agreement specifically to adapt the rules of the global trading system to the public health needs of people in poor countries." The amendment made permanent a waiver for the export of pharmaceuticals produced by compulsory licensing that originated in paragraph 6 of the 2001 Doha Declaration on TRIPS and Public Health. Compulsory licensing allows countries to produce pharmaceuticals without the patent or consent of the patent owner, thus allowing the country to address national health problems it might not otherwise be able to overcome. While compulsory licensing has always existed under the TRIPS Agreement, it was limited to primarily domestic use by the producer. With the amendment, least developed countries that did not have the capacity to produce generic version of pharmaceuticals via compulsory licensing now have permanent legal grounds to import these generics. Member states that have not yet accepted the amendment have until the end of December 2017 to do so.

5. Resolution 2338 (United Nations Security Council – January 26, 2017)

<http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2338(2017)>

On January 26, 2017, the United Nations Security Council passed Resolution 2338 regarding the efforts to reunify Cyprus. The resolution welcomed "the progress of the leaders-led negotiations so far and the ongoing efforts of the leaders and their negotiators to reach a comprehensive and durable settlement, and encourage[d] the sides to grasp the current opportunity with determination to secure a comprehensive

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settlement." The Council also extended the mandate of the United Nations Peacekeeping Force in Cyprus (UNFICYP) until July 31, 2017, and "called upon both sides to continue to engage, as a matter of urgency, in consultations with UNFICYP on demarcation of the buffer zone, and on the 1989 aide-memoire with a view to reaching early agreement on outstanding issues."

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