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Resolutions, Declarations, and Other Documents

1. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 3 of the Committee Against Torture Implementation of Article 14 by States Parties (Nov. 19, 2012)

<*http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3.pdf*>

The Committee Against Torture has issued General Comment No. 3 on the implementation of Article 14 (adequate compensation) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In its General Comment, the Committee has clarified the states parties' obligations under Article 14, which requires that each state party ''ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.'' Furthermore, the Committee emphasized that Article 14 applies ''to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment . . . without discrimination of any kind.''

The Committee stressed that the term ''redress'' in Article 14 ''refers to the full scope of measures required to redress violations under the Convention,'' including ''restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.'' Moreover, the Committee emphasized that ''[r]eparation must be adequate, effective and comprehensive,'' ensuring that victims are remedied for their suffering while also preventing and deterring future violations.

The term ''victim'' was also read broadly to include ''persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention.''

2. United Nations Office on Drugs and Crime: The Use of the Internet for Terrorist Purposes (Sept. 2012)

<*http://www.unodc.org/documents/frontpage/Use_of_Internet_for_Terrorist_Purposes.pdf*>

The United Nations Office on Drugs and Crime (''UNODC'') has issued a report ''to promote a better understanding'' of how the Internet can be misused for acts of terrorism and ''to increase collaboration'' among member states in criminalizing such abuse. The report is ''intended to provide practical guidance to Member States to facilitate the more effective investigation and prosecution of terrorist cases involving the use of the Internet.''

According to the report, while the Internet has many ''self-evident'' benefits, it can also be easily exploited for terrorism purposes. The report notes that the Internet is used by terrorist organizations and their supporters for numerous purposes, ''including recruitment, financing, propaganda, training, incitement to commit acts of terrorism, and the gathering and dissemination of information for terrorist purposes.'' Consequently, Member States should be better equipped to effectively address and decrease threats posed by terrorism-related activities on the Internet.

Notably, the report, which also provides helpful information on the current legal framework related to counter-terrorism in general and cyber security in particular, also highlights the importance of respecting human rights and fundamental freedoms, ''in particular, in the context of the development and implementation of legal instruments related to countering terrorism.'' According to the report, ''human rights obligations form an integral part of the international legal counterterrorism framework, both through the obligation imposed on States to prevent terrorist attacks, which have the potential to significantly undermine human rights, and through the obligation to ensure that all counter-terrorism measures respect human rights.''

* As a service to our readers we include, when available, an internet address to these documents or to their sources. Web addresses change frequently, but are correct as of the date of ILM's publication.

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JUDICIAL AND SIMILAR PROCEEDINGS

1. Prosecutor v. Lukic et al. (ICTY Dec. 4, 2012)

<*http://www.icty.org/x/cases/milan_lukic_sredoje_lukic/acjug/en/121204_judgement.pdf*>

In *Prosecutor v. Milan Lukic & Sredoje Lukic*, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia affirmed Milan Lukic's life sentence, subject to credit for the period already spent in detention, and reduced Sredoje Lukic's sentence of thirty years' imprisonment to twenty-seven years' imprisonment, also subject to credit for the period already spent in detention. While the Appeals Chamber essentially agreed with the Trial Chamber's findings, it reversed Sredoje Lukic's convictions for having aided and abetted the crimes of cruel treatment as a violation of the laws or customs of war, as well as persecutions and other inhumane acts as crimes against humanity, in relation to beatings in the Uzamnica Camp.

Milan and Sredoje Lukic are cousins from Bosnia who were tried and convicted by the ICTY Trial Chamber in 2009 for six different incidents against Muslim civilians in the region of Višegrad, Bosnia and Herzegovina, between 1992 and 1993. The Trial Chamber had found Milan Lukic guilty of committing persecution, murder, extermination, and other inhumane acts as crimes against humanity, and murder and cruel treatment as violations of the laws or customs of war. Sredoje Lukic had been convicted for aiding and abetting several crimes committed by Milan, for extermination, and for having beaten detainees at a concentration camp. Both appealed their convictions.

2. Souza Ribeiro v. France (Eur. Ct. H.R. Dec. 13, 2012)

<*http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115498*>

The Grand Chamber of the European Court of Human Rights has unanimously held that France violated Article 13 (right to an effective remedy) in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights because it failed to provide the applicant, a Brazilian national living in French Guiana (an overseas region and *département* of France in South America), with a possibility to challenge the lawfulness of his removal to Brazil.

The applicant lived in French Guiana with his family from the age of seven until January 2007, when he was deported to Brazil less than thirty-six hours after his arrest because he was unable to procure proof of legal residence. After being unable to obtain a valid reentry visa, the applicant returned to French Guiana illegally in August 2007, and two years later, he was able to obtain a renewable residence permit for ''private and family life,'' which allows him to remain in French Guiana legally. The applicant alleged that his immediate removal to Brazil amounted to unjustified interference with his Article 8 right to respect for his private and family life and his Article 13 right to an effective remedy.

In June 2011, the Section Chamber ruled that there was no violation of Article 13 in conjunction with Article 8. While the Chamber found that the applicant's initial appeal with the administrative court after he was arrested had no suspensive effect, thus allowing his immediate removal, he eventually was able to obtain a residence permit. Furthermore, the Chamber concluded that ''the applicant's removal had not lastingly broken his family ties, as he had been able to return to French Guiana some time after being deported – albeit illegally at first.'' Thus, taking into account the margin of appreciation states enjoy in immigration matters, the Chamber found no violation of Article 13 of the Convention taken together with Article 8.

The Grand Chamber disagreed, finding instead that the applicant's extremely rapid removal left him with no meaningful way to challenge the lawfulness of the removal order. And while the Grand Chamber acknowledged that in immigration cases, ''as a matter of well-established international law and subject to their treaty obligations,'' states ''have the right to control the entry, residence and expulsion of aliens,'' domestic measures that interfere with a right protected under paragraph 1 of Article 8 of the European Convention ''must be in accordance with the law, pursue a legitimate aim and be necessary in a democratic society.'' Furthermore, states must ensure that individuals' Article 13 Convention right, which guarantees

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''a remedy to enforce the substance of the Convention rights and freedoms in whatever form they are secured in the domestic legal order,'' is available and effective.

In the present case, the Grand Chamber found that ''the haste with which the removal order was executed had the effect of rendering the available remedies ineffective in practice and therefore inaccessible.'' As a result, the Grand Chamber concluded that the applicant ''did not have access in practice to effective remedies in respect of his complaint under Article 8 of the Convention when he was about to be deported. That fact was not remedied by the eventual issue of a residence permit.'' Ruling on an equitable basis, the Court awarded the applicant EUR 3,000 in respect of non-pecuniary damage and EUR 12,000 for the costs and expenses incurred in the proceedings.

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