

JUDICIAL AND SIMILAR PROCEEDINGS

1. **Prosecutor v. Karadžić (International Criminal Court – March 24, 2016)**

http://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf

On March 25, 2016, the International Criminal Tribunal for the Former Yugoslavia (ICTY) convicted Radovan Karadžić, former President of the Republika Srpska and Supreme Commander of the Bosnian Serb army, of genocide, war crimes, and crimes against humanity. The judgment concerned crimes committed between 1992 and 1995 during the armed conflict in Bosnia and Herzegovina. The specific acts for which Karadžić was convicted include persecution, extermination, murder, deportation, inhumane acts (including forcible transfer), terror, unlawful attacks on civilians, and hostage-taking. In its decision, the Trial Chamber determined that Karadžić had participated in four overlapping joint criminal enterprises during the conflict in Bosnia and Herzegovina. The first, which existed between October 1991 and November 1995, included a common scheme to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory through the commission of crimes across a range of municipalities, a policy that has come to be known as “ethnic cleansing.” The second joint criminal enterprise, which occurred between April 1992 and November 1995, was a campaign intended to terrorize the civilian population of Sarajevo through artillery shelling and sniper fire. The third joint criminal enterprise involved taking United Nations personnel hostage between May 26 and June 19, 1995 in an attempt to compel the North Atlantic Treaty Organization (NATO) to refrain from conducting airstrikes against Bosnian Serb targets. The fourth joint criminal enterprise regarded the July 1995 massacre at the city of Srebrenica, where approximately 30,000 Bosnian Muslims were forcibly removed from their homes and approximately 8,000 Bosnian Muslim men and boys were systematically executed. Karadžić was sentenced to forty years imprisonment, with credit for the time he has spent in detention since 2008.

2. **Prosecutor v. Šešelj (International Criminal Tribunal for the former Yugoslavia – March 31, 2016)**

<http://www.icty.org/x/cases/seselj/tjug/en/160331.pdf>

On March 31, 2016, the International Criminal Tribunal for the Former Yugoslavia (ICTY) acquitted Vojislav Šešelj, former Deputy Prime Minister of Serbia and current head of the Serbian Radical Party. Šešelj faced nine counts, including three counts of crimes against humanity and six counts of war crimes. He was accused of recruiting and arming Serb paramilitary forces who between 1991 and 1993 took part in atrocities committed in the former Yugoslavia. The prosecution alleged that Šešelj incited violence by advocating for a “Greater Serbia” through forced displacement of Bosnian Muslims and Croats. His supporters are alleged to have committed atrocities, including during the 1991 siege of Vukovar. He was charged individually and through his alleged participation in a joint criminal enterprise. His acquittal was primarily based on two grounds. The first was insufficient evidence of a criminal purpose. The majority found that his aim of recruiting volunteers to create a “Great Serbia” was a political, rather than a criminal endeavor. The second ground for his acquittal was insufficient evidence that he had “hierarchical responsibility” or effective control over the paramilitary forces who he recruited. Judge Flavia Lattanzi wrote a dissenting opinion in which she argued that evidence of Šešelj’s moral and material support for paramilitary groups was sufficient to find that he aided and abetted the commission of eight of the nine crimes with which he was charged. At the time the verdict was rendered, Šešelj was in Serbia, where the Tribunal granted him leave to return to undergo treatment for cancer.

3. **Aranyosi and Căldăraru v. Generalstaatsanwaltschaft Bremen (Court of Justice of the European Union – April 5, 2016)**

<http://curia.europa.eu/juris/celex.jsf?celex=62015CJ0404&lang1=en&type=TXT&ancre=>>

On April 5, 2016, the Court of Justice of the European Union ruled that the execution of a European arrest warrant must be postponed if the conditions of detention in the member state that issued the warrant pose a real risk of inhuman or degrading treatment. The case concerned warrants from Hungary and Romania respectively, which called for the return to the countries of two men who had been located in Germany. The

local court in Germany deciding on the execution of the warrants expressed concern that the men might be subject to detention conditions that violate the Charter of Fundamental Rights of the European Union, and called on the Court to determine “whether, in such circumstances, the execution [of the warrants] must be refused.” The Court found that “the absolute prohibition on inhuman and degrading treatment or punishment is part of the fundamental rights protected by EU law,” and therefore states have to evaluate all the evidence available to them to ascertain the risk before making a decision on the surrender of individuals. It further clarified that the existence of information on “the general detention conditions” in itself cannot be enough to refuse execution of the warrant; rather “it is necessary to demonstrate that the individual in question will be exposed to such a risk.” The Court concluded that if the authority deciding on the execution of the warrant does find that an individualized risk exists, “the execution of the warrant must be deferred until there has been obtained additional information on the basis of which that risk can be discounted. If the existence of that risk cannot be discounted within a reasonable period, that authority must decide whether the surrender procedure should be brought to an end.”

4. Bank Markazi v. Peterson (United States Supreme Court – April 20, 2016)

https://www.supremecourt.gov/opinions/15pdf/14-770_9o6b.pdf

On April 20, 2016, The U.S. Supreme Court ruled that Congress did not exceed its legislative powers allowing victims of terrorism access to frozen Iranian assets in *Bank Markazi v. Petersen*. A group of plaintiffs brought a wrongful death action in the U.S. Court of Appeals for the Second Circuit for acts of terrorism sponsored by Iran in the 1983 bombings in Beirut, Lebanon. While the case was ongoing, Congress passed the Iran Threat Reduction and Syria Human Rights Act in 2012. The Act includes a section allowing access to \$2 billion of frozen Iranian funds kept in a New York bank account by Bank Markazi (Central Bank of Iran) “in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by” certain acts of terrorism. The Second Circuit relied on the new legislation and found for the U.S. families. The Iranian government brought the case to the Supreme Court, arguing that the new legislation allowed Congress to usurp judicial authority violating separation of powers. The Court held that the federal statute does not violate the separation of powers doctrine, even if it directs a particular result in a single pending case. The Court reasoned that Congress may require “a court to apply a new legal standard in a pending prejudgment enforcement proceeding” and the statute was a valid exercise of Congressional authority regarding foreign affairs. The Court affirmed the judgment by a six-to-two majority in an opinion by Justice Ginsburg. Chief Justice Roberts filed a dissenting opinion, which Justice Sotomayor joined.

5. Abdi Mahamud v. Malta (United States Supreme Court – May 3, 2016)

<http://hudoc.echr.coe.int/eng?i=001-162424>

On May 3, 2016, the European Court of Human Rights (ECtHR) issued its ruling in *Abdi Mahamud v. Malta*. The Court held that Malta violated Article 3 of the European Convention on Human Rights (ECHR)—which prohibits degrading treatment—as well as provisions of the Convention’s Article 5 right to liberty and security. The complaint was based on Malta’s prolonged detention of Abdi Mahamud while she awaited decisions on her asylum application and her request for provisional release from immigration detention based on ill-health and her status as a vulnerable person. Mahamud was intercepted by Maltese immigration police shortly after arriving in Malta by boat in May 2012. After she was confined to a detention facility and served an order of removal, Mahamud applied for asylum, citing a fear of nationality-based persecution should she be repatriated to her home country of Somalia. Mahamud’s asylum claim was ultimately denied by Malta in December 2012. While her asylum application was pending, Mahamud applied for release from detention on account of her health. In December 2012, Mahamud was interviewed regarding her petition for release. She was verbally informed in April 2013 that she would be released and was subsequently released in September 2013. In her claim, Mahamud alleged that the conditions of her detention violated Article 3 of the ECHR due to overcrowding, limited access to outdoor exercise, lack of privacy, and lack of female staff at the Lyster Barracks detention facility. She cited as violations of Article 5 the prolonged length of the decisions regarding

her asylum application and her petition for release from detention, as well as the overall length of her detention. Dismissing the Maltese government's argument that Mahamud had failed to exhaust domestic law remedies, the ECtHR held that the conditions of Mahamud's detention violated Article 3 of the ECHR. The Court also held that delays in processing Mahamud's petitions for asylum and release and her subsequent detention violated Article 5. Mahamud was awarded twelve-thousand Euros in non-pecuniary damages and an additional two-thousand five-hundred Euros for costs and expenses.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. **European Union-Turkey Agreement on Migrants (March 18, 2016)**

<http://dsms.consilium.europa.eu/952/Actions/Newsletter.aspx?messageid=4261&customerid=9612&password=enc_3832323931454546_enc>

On March 18, 2016, the European Union and Turkey reached an agreement for the return of migrants who illegally entered Greek territory to be returned to Turkey. Under the agreement, Turkey is required to "take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU" and take back all "new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016." The deal further foresees that "[f]or every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria." After the irregular migration flow has been contained, the agreement calls for a "Voluntary Humanitarian Admission Scheme" to take over, resettling migrants on a voluntary basis among the member states. Turkey will further receive \$6.6 billion in financial aid to provide for the migrants in its territory, and its citizens will be granted visa-free travel to the EU this summer if certain conditions are met. Additionally, the agreement sets out the possibility for resumption of negotiations for accession to the EU. The idea behind the agreement is "that it will deter migrants from trying to make dangerous journeys into Europe and encourage a legal path to Europe by offering to resettle at least some Syrians among the nearly three million migrants already in Turkey."

2. **Resolution 2283 (United Nations Security Council – April 28, 2016)**

<[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2283\(2016\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2283(2016))>

On April 28, 2016, the United Nations Security Council adopted a resolution lifting its entire sanctions regime on Côte d'Ivoire. The sanction included "an arms embargo . . . and targeted asset freezes and travel bans on people deemed by the Council's Sanctions Committee to constitute a threat to the peace and reconciliation process." The Council "welcom[ed] the progress achieved in the stabilization of Côte d'Ivoire, including in relation to disarmament, demobilisation and reintegration (DDR) and security sector reform (SSR), national reconciliation and the fight against impunity, as well as the successful conduct of the presidential election of 25 October 2015 and progress on the management of arms and related materiel as well as combating the illicit trafficking of natural resources." In a second resolution, the Council authorized the final renewal of the mandate for the United Nations Operation in Côte d'Ivoire (UNOCI) for one year, in order to provide support to Ivorian security forces in the protection of civilians and assist the government in consolidating peace and stability.

3. **Investigation Report of the Airstrike on the Médecins Sans Frontières/Doctors Without Borders Trauma Center in Kunduz, Afghanistan on 3 October 2015 (April 29, 2016)**

<[https://www6.centcom.mil/FOIA_RR_Files/5%20USC%20552\(a\)\(2\)\(D\)Records/1.%20Airstrike%20on%20the%20MSF%20Trauma%20Center%20in%20Kunduz%20Afghanistan%20-%202015%20Oct%202015/01.%20AR%2015-6%20Inv%20Rpt-Doctors%20Without%20Borders,%202015%20Oct%202015_CLEAR.pdf](https://www6.centcom.mil/FOIA_RR_Files/5%20USC%20552(a)(2)(D)Records/1.%20Airstrike%20on%20the%20MSF%20Trauma%20Center%20in%20Kunduz%20Afghanistan%20-%202015%20Oct%202015/01.%20AR%2015-6%20Inv%20Rpt-Doctors%20Without%20Borders,%202015%20Oct%202015_CLEAR.pdf)>

On April 29, 2016, the U.S. government released a report detailing the results of its investigation into the October 3, 2015, bombing of a hospital in Kunduz, Afghanistan by U.S. forces. An American AC-130 gunship was attempting to support U.S. Special Forces and Afghan troops engaged in a prolonged battle with Taliban forces in Kunduz City when it mistakenly fired upon a hospital. The trauma center was being operated by Médecins Sans Frontières (MSF), an international non-governmental organization also known by its English

name, Doctors Without Borders. The report details a chain of errors that resulted in the hospital being misidentified as a nearby building from which Taliban forces were thought to be operating. Sustained bombardment of the hospital resulted in the deaths of forty-two civilians, including hospital staff and patients. An additional thirty civilians reportedly sustained injuries. The report includes key findings that U.S. troops violated the laws of armed conflict and their own rules of engagement, both of which require forces to take adequate precaution in attack. The report states that U.S. forces both on the ground and in the air “failed to identify the MSF trauma center as a lawful target . . . [t]herefore, it should have been presumed to be a civilian compound.” However, the report concluded that no war crimes had been committed by U.S. forces because they did not intend to target the hospital. The summary of the report states that “[t]he label ‘war crimes’ is typically reserved for intentional acts—intentionally targeting civilians or intentionally targeting protected objects” and “none of the personnel knew that they were striking a medical facility.”