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Judicial and Similar Proceedings

1. Kaliña y Lokono v. Suriname (Inter-American Court of Human Rights – January 28, 2016)
<http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_esp.pdf>

On January 28, 2016, the Inter-American Court of Human Rights (Court) published its decision in *Kaliña y Lokono v. Surinam*, recognizing two villages' rights to juridical personality, right of collective ownership of their territory, and their right to environmental protection. The case arose from a claim by two villages, Kaliña and Lokono, arguing that the state had failed to recognize their juridical personality and their right of collective ownership over their traditional territory, to which they hold no legal title. The government had created nature preserves and developed mining sites on the territories, without consulting the villagers and the indigenous population in the area. The commercial activity led to a restriction of access for the inhabitants, damage to the environment, and had a negative impact on their hunting and fishing opportunities. The Court found that Suriname had violated Article 3 of the American Convention on Human Rights (Convention) by failing to recognize the collective legal personality asserted by the indigenous and tribal people in this case. It further noted that the lack of demarcation, delimitation, and failure to award legal title of the territory of Kaliña and Lokono violated the villagers' collective right to property recognized under Article 21 of the Convention. With regard to the nature preserves, the Court recognized the state's need to balance environmental protection with the traditional use of these areas by indigenous people and noted that by the very nature of their way of life, they could contribute to preservation and conservation strategies. Finding that the same lack of consultations had affected the mining activities, the Court decided that the state had infringed the villagers' right to collective property and political participation under Articles 21 and 23 of the Convention. Finally, the Court ruled that there was no effective legislation in place to ensure that indigenous people could assert their right to collective property, and thus found a violation Article 25 of the Convention.

2. Decision of 15 December 2015 (2BvL 1/12) (German Constitutional Court – February 12, 2016)
<http://www.bverfg.de/e/ls20151215_2bvl000112.html>

On February 12, 2016, the German Constitutional Court (Court) published a decision confirming that the German legislature is not prohibited from adopting laws that contravene international treaties. The case arose from a question posed by the Federal Court of Finance, which sought clarification on whether a newly adopted law may infringe rights conferred on tax payers under a double taxation treaty between Germany and Turkey. The law at issue in the case provides that "the exemption 'will only be granted, irrespective of the applicable [double taxation] treaty'" if certain conditions are met. The Court confirmed the validity of the treaty override, noting that "[t]he legislature is not barred from enacting statutes even if those contravene international treaties." The Court further stated that within the hierarchy of norms in German law "international treaties have the same rank as statutory federal law," and stressed that the "principle of democracy requires that . . . later legislatures be able to revoke legal acts of previous legislatures." Finally, the Court decided that "[n]either the rule of law nor the principle of the Constitution's openness to international law . . . yield a different result. Although the latter principle is also of constitutional rank, it does not entail an absolute constitutional duty to obey all rules of international law."

3. Mozer v. the Republic of Moldova and Russia (European Court of Human Rights – February 23, 2016)
<http://hudoc.echr.coe.int/eng?i=001-161055>

On February 23, 2016, the Grand Chamber of the European Court of Human Rights (Court) held in *Mozer v. the Republic of Moldova and Russia* that Russia is responsible for the unlawful detention of a criminal suspect under inhuman conditions in Transdniestria. Boris Mozer, a Moldovan national, was living in the Moldovan Republic of Transdniestria (MRT), an unrecognized separatist entity that split from Moldova in 1990, when he was arrested on fraud charges by MRT authorities. After Mozer was forced to sign various confessions, the MRT court sentenced him to prison, a sentence the Supreme Court of the Republic of Moldova

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quashed, stressing that the tribunal had not been established in accordance with Moldovan legislation. The Moldovan government informed Mozer's parents that "it could not intervene due to the political situation in the Transdniestrian region" and "Moldova's reservation in respect of its inability to ensure observance of the European Convention on Human Rights in the Eastern regions of Moldova." The Russian embassy in Moldova forwarded a complaint to the MRT prosecutor, who stated that MRT courts alone were competent to hear any complaints related to cases before them. The Court found that "complaints in respect of the Transdniestrian region fell within both [Russia's and Moldova's] jurisdiction." Since the region was recognized under international law as a part of Moldova's territory, the state was obliged under Article 1 of the Convention "to use all the legal and diplomatic means available to it to continue to guarantee the enjoyment of the rights under the Convention to those living there," even though it had no effective control over MRT. The Court ruled Russia was responsible as well, because "the region's high level of dependency on Russian support gave a strong indication that Russia continued to exercise effective control and decisive influence over the 'MRT' authorities," who would likely be unable to survive without Russian support. The Court further found that Russia had violated Article 5 of the Convention, because, as the state which had effective control over MRT, it was obliged to ensure that MRT courts formed "part of a judicial system operating on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention." Noting that "the circumstances in which Mr Mozer had been arrested and the way his detention had been ordered and extended" were incompatible with the Convention, the Court concluded that MRT courts did not comply with Convention standards and his detention had thus been unlawful. Regarding Moldova, the Court highlighted that its Supreme Court had quashed the conviction, and Moldovan authorities had made significant efforts to support Mozer, including through a number of appeals to Russia to protect his rights. The Court further found violations of Articles 3, 8, and 9 because of the failure of MRT authorities to provide Mozer medical help and transfer him to an appropriate holding facility, and the denial of visits by a priest and by his parents.

4. Osso v. Region Hannover; Warendorf v. Alo (Court of Justice of the European Union – March 1, 2016)

<http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d570dc8a2da12648418610fa0ade8f0cb7.e34KaxiLc3qMb40Rch0SaxuSbx90?text=&docid=174657&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=884413>

On March 1, 2016, the Court of Justice of the European Union decided that place-of-residence conditions may be imposed on beneficiaries of subsidiary protection in a member state in order to address integration difficulties. Ibrahim Alo and Amira Osso are Syrian citizens who travelled to Germany in 1998 and 2001, respectively, where they were granted subsidiary protection status and residence permits subject to place-of-residence conditions. The Court found that an EU Directive requires member states "to allow persons to whom they have granted subsidiary protection status not only to move freely within their territory but also to choose their place of residence within that territory." However, the Court ruled that exceptions to the Directive may be made where "beneficiaries of subsidiary protection . . . are not . . . in a situation which is objectively comparable with that of non-EU citizens legally resident in the Member State concerned or that of nationals of that State." It further found that while the residency requirements are not justified in order to ensure an equal distribution of the financial burden associated with the provision of welfare benefits within the member state, the Directive does allow such conditions "for the purpose of promoting . . . integration [if beneficiaries] face greater difficulties relating to integration than other non-EU citizens legally resident in Germany."

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Opinion No. 54/2015 Concerning Julian Assange (UN Working Group on Arbitrary Detention – February 5, 2016)

<http://www.ohchr.org/Documents/Issues/Detention/A.HRC.WGAD.2015.docx#sthash.3y3QPZJp.dpuf>

On February 5, 2016, the United Nations Working Group on Arbitrary Detention issued a report finding that WikiLeaks founder Julian Assange was arbitrarily detained by the governments of Sweden and the United Kingdom of Great Britain and Northern Ireland. Assange has been detained since December 2010, when

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Swedish authorities charged him with rape. In its statement, the Working Group noted that Assange had been "subjected to different forms of deprivation of liberty: initial detention in Wandsworth prison which was followed by house arrest and his confinement at the Ecuadorian Embassy." It stressed that in addition to the "continuous deprivation of liberty . . . the detention was arbitrary because he was held in isolation during the first stage of detention and because of the lack of diligence by the Swedish Prosecutor in its investigations, which resulted in the lengthy detention of Mr. Assange." Finally, the Working Group "considered that the detention should be brought to an end and that Mr. Assange should be afforded the right to compensation."

2. Memorandum of Understanding between the International Criminal Court and Inter-American Court of Human Rights (February 16, 2016)
<https://www.icc-cpi.int/iccdocs/oj/MoU_CR_En.pdf>

On February 16, 2016, the International Criminal Court (ICC) and the Inter-American Court of Human Rights signed a memorandum of understanding to strengthen the cooperation between the institutions. The memorandum sets out the terms of the cooperation, focusing on "assistance by exchanging knowledge, experience and expertise inherent to the conduct of their respective mandates, subject to observance of their respective applicable legal regimes." The two courts will "maintain contact with each other, including through the exchange of visits, the cooperation in the temporary mobility of personnel, the holding of meetings on matters of common interest, and the establishment of appropriate liaison arrangements as may be necessary to facilitate their effective cooperation." ICC President Judge Fernández de Gurmendi stated, "[h]uman rights courts, international criminal tribunals and national tribunals are complementary components of a global justice system. Together we make up an interdependent system in which judicial institutions complement and reinforce each other in promoting human rights and the rule of law." She also pointed to the common challenges international tribunals face, including complementarity, legitimacy and efficiency, and noted the agreement could help find solutions, especially considering the long-standing support for the ICC in Latin America and the Caribbean.

3. Canada-EU Investor State Dispute Settlement System in Trade Deal (February 29, 2016)
<http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf>

On February 29, 2016, the European Union and Canada agreed on a new approach to investment protection in the revised version of the Canada-EU Comprehensive Economic and Trade Agreement (CETA). Commentators on the Agreement have noted that "[t]his represents a clear break from the old Investor to State Dispute Settlement (ISDS) approach and demonstrates the shared determination of the EU and Canada to replace the current ISDS system with a new dispute settlement mechanism and move towards establishing a permanent multilateral investment court." The new agreement expressly reserves the right to regulate for public policy purposes and clarifies that investment protection does not amount to a guarantee that legal frameworks will remain unchanged. The revised version will further establish a "permanent Tribunal of fifteen Members which will be competent to hear claims for violation of the investment protection standards" and establishes an Appellate Tribunal, which will have the power to modify, reverse, or annul the first instance Tribunal's awards. The revised agreement also memorializes the parties' intention to establish a permanent multinational investment court, which will replace the bilateral mechanism established under CETA. The text further clarifies that the Tribunal will only apply CETA itself, and has no authority to adjudicate matters of EU or member states' domestic law.

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