

BRIEFLY NOTED

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JUDICIAL AND SIMILAR PROCEEDINGS

1. **A.M. v. Russia (European Court of Human Rights – July 6, 2021)**

<https://hudoc.echr.coe.int/eng?i=001-210878>

On July 6, 2021, the Third Section of the European Court of Human Rights issued its judgment in the above case concerning a trans woman’s Article 8 right to family life and Article 14 right to non-discrimination on gender identity grounds. The Applicant (divorced) in the case was prevented from seeing her children by their biological mother on the grounds that her gender transition had caused irreparable harm to the mental health and morals of the children. During the dispute, an “expert report” had confirmed the Applicant’s diagnosis of “transsexualism,” noting the applicant’s “principled inability to preserve a male appearance” and her “insufficient consideration [. . .] of the age-related specificities of the children’s development,” and that report was relied upon by a district court in Moscow to prevent the Applicant from seeing her children. After several other unsuccessful appeals, the Applicant brought the case to the ECtHR, arguing under Article 8 that the restriction of her parental rights had not been necessary in a democratic society and was therefore a violation of her right to respect for family life. In reviewing the domestic courts’ decisions, the Court criticized their reliance on the expert report, in particular its failure to actually explain how the Applicant’s gender transition represented a risk to her children. According to the Court, this was even more concerning given that the report itself acknowledged that there is no real scientific evidence on this issue. Moreover, available international material “is unanimous that domestic courts deciding on the restriction of parental rights and contact should aim to (1) keep children together with their parents and, in the event of their separation, maintain direct contact between them on a regular basis, (2) take the child’s best interests as a primary consideration, and (3) assess the entire family situation through close and individualised scrutiny.” The Court concluded that the domestic courts had failed to consider the Applicant’s specific family situation and that a complete deprivation of parental rights should be reserved for only the most extreme circumstances, which were not present in this case. Therefore, the Court found a violation of Article 8.

With regard to Article 14, the Court noted the prominent role that the Applicant’s gender had played in the decisions of the domestic courts, which resulted in the Applicant’s difference in treatment from non-trans parents seeking contact with their children. The Court reiterated the domestic courts’ failure to properly scrutinize the circumstances and whether there was in fact any harm caused a result of this contact. Because it failed to do this, a decision was made based entirely on the Applicant’s gender, in violation of Article 14.

2. **Temporary Suspension of Investigation into the Philippines (International Criminal Court – November 18, 2021)**

<https://www.icc-cpi.int/court-record/icc-01/21-14>

On November 18, 2021, the International Criminal Court (ICC) temporarily suspended its investigation into the Philippines. According to an ICC [press release](#), the Philippines requested deferral of the Office of the Prosecutor’s (Office) investigations and proceedings related to alleged crimes against humanity committed between July 1, 2016 and March 16, 2019 “in the context of the so-called ‘war on drugs’ campaign,” and in the Davao area between November 1, 2011 and June 30, 2016. The Office took the view that it is necessary for a state that requests deferral to demonstrate “concrete and progressive investigative steps have been or are currently being undertaken to ascertain the responsibility of persons for alleged conduct.” The Office, accordingly, stated that it will request that the Philippines provide “substantiating information regarding the investigations and proceedings.” The Office further stated that the investigation is temporarily suspended for the matters requested by Philippines; however, the Office will continue to analyze information that it already possesses or information that is submitted by third parties.

On February 12, 2022, the U.S. Secretary of State, the Japanese Foreign Minister, and the Republic of Korea (ROK) Minister of Foreign Affairs issued a [joint statement](#) regarding the “critical importance of strong U.S.-Japan-ROK trilateral cooperation as we seek to address the most pressing 21st Century challenges.” The statement focused on the importance of “trilateral cooperation” and emphasized the fact that the “three countries share[d] a common view of a free and open Indo-Pacific, which is inclusive, and shared respect for the rules-based international order.” In the joint statement, the parties, “committed to close trilateral cooperation to achieve complete denuclearization and lasting peace on the Korean Peninsula.” Through the joint statement the parties reaffirmed “their commitment to U.S.-ROK-Japan trilateral cooperation that is grounded in our shared values and desire for regional peace, stability, and prosperity.”