

BRIEFLY NOTED*

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JUDICIAL AND SIMILAR PROCEEDINGS

1. **Application of the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (Canada & the Netherlands v. Syrian Arab Republic) (International Court of Justice – November 16, 2023)**

<https://www.icj-cij.org/sites/default/files/case-related/188/188-20231116-ord-01-00-en.pdf>

On November 16, 2023, the International Court of Justice voted 13 – 2 in favor of issuing a binding Order in the [case](#) of *Canada and the Netherlands v. Syrian Arab Republic*. The Order adopted two provisional measures, which require Syria to prevent acts of torture and other cruel punishment, ensure that its officials and organizations do not commit torture or other cruel punishments, and preserve any evidence related to the allegations of the case. A [Request](#) for the Indication of Provisional Measures seeking such an order had been entered on June 8, 2023, by Canada and the Netherlands, for which oral arguments were held on October 10, 2023. The Request came alongside Canada’s and the Netherlands’ Joint [Application](#) instituting proceedings against Syria for violations of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The Request and Application were made pursuant to Articles 36 and 41 of the Statute of the Court, Article 30 of the Convention against Torture, and Articles 73, 74, and 75 of the Rules of the Court. Vice-President Gevorgian and Judge Xue voted against both provisional measures, with Vice-President Gevorgian appending a dissenting opinion and Judge Xue appending a declaration.

The Application and Request alleged that Syria had used “torture and other cruel, inhuman or degrading treatment or punishment” in the violent repression of civilian demonstrations, the use of chemical weapons against civilians, and through the use of sexual and gender based violence against detainees. The Application, on page 2, notes that “Syria has consistently denied wrongdoing, despite clear and compelling evidence demonstrating the sheer magnitude of violations of the Convention against Torture that are attributable to Syria and that continue to this day.” Despite a ceasefire being in place, Syria has continued to violate the Convention and offenders have had “continued impunity.”

Syria and Syrian officials have long faced criticism and condemnation of their actions during the Arab Spring and the resulting civil war in their country. In recent years, Syrian officials have been facing criminal legal action and conviction in foreign countries for their crimes, with universal jurisdiction serving as the basis for the proceedings. In January 2022, Anwar Raslan, a colonel in the Syrian intelligence service, was [sentenced](#) to life in prison by a German court for “torture, killings, serious deprivation of liberty, rape, sexual assault, and hostage taking” that had taken place during his time as overseer of a Syrian prison. Most recently, on November 15, 2023, French judges [issued arrest warrants](#) for Bashar Al-Assad and three others for their use of chemical weapons against civilians.

2. **Right to Strike under International Labor Organization Convention No. 87 – Request for an Advisory Opinion (International Court of Justice – November 16, 2023)**

<https://www.icj-cij.org/sites/default/files/case-related/191/191-20231116-ord-01-00-en.pdf>

On November 16, 2023, the International Court of Justice (ICJ) issued an order organizing proceedings for rendering an advisory opinion on the [question](#) of whether the right of workers to strike is protected under the Freedom of Association and Protection of the Right to Organize [Convention](#) of 1948. The ICJ decided that the International Labor Organization (ILO) and States parties to the Convention “are considered likely to be able to furnish information on the question submitted to the Court. . . .” Additionally, the six consultative organizations of the ILO “(the International Organization of Employers, the International Trade Union Confederation, the World Federation of Trade Unions, the International Cooperative Alliance, the

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Organization of African Trade Union Unity, and Business Africa)” are considered to be able to provide relevant information to the Court.

The International Labor Organization submitted only the one question and requested that the advisory opinion be “rendered urgently,” which requires the Court to “take necessary steps to accelerate the procedure.” As such, the Court has set May 16, 2024, as the “time-limit within which” any written statements must be submitted and September 16, 2024, as the limit for submitting any comments on other written statements. The Court has not set any further dates or proceedings, having reserved “the subsequent procedure for further decision.”

3. Waleśa v. Poland (European Court of Human Rights – November 23, 2023)

<https://hudoc.echr.coe.int/eng?i=001-229366>

The European Court of Human Rights (ECtHR) handed down a unanimous [decision](#) on November 23, 2023, in a case brought by former Polish President Lech Walesa against the Polish Government. The Court concluded that a Polish Appeals Court, the Chamber of Extraordinary Review and Public Affairs (CERPA), had violated Walesa’s right to an independent and impartial trial, breached “the principle of legal certainty,” and violated his right to respect for private and family life. The Court found that the CERPA “was not an ‘independent and impartial tribunal established by law’” and was often used by the state to “further its own political opinions and motives,” as the Prosecutor General of Poland and the Executive branch of government held considerable influence and authority over the judicial system. Additionally, the 2017 law that created the CERPA gave to the General Prosecutor “the unlimited power to contest virtually any final judicial decision” and extended the time limits for filing appeals, which enabled the Prosecutor to act retroactively and undermine the “requirement of foreseeability.”

A report in [JURIST](#) highlighted the ECtHR’s finding that “the extraordinary appeals process in Walesa’s case ‘could not be separated from its political background’” and had “‘adversely affected Mr. Walesa’s private life to a significant degree.’” JURIST noted that Walesa is a “staunch supporter of democracy and left-wing values. . . [and] has been openly critical of the Polish government.” The decision in this case is one in a string of cases in which the ECHR has found the Polish Extraordinary Appeals Court to be lacking independence and impartiality, and as continuously violating defendants’ rights. The Court has required Poland to rectify the situation through legislative and other means, and ordered Poland to pay Walesa non-pecuniary damages in the amount of thirty-thousand euros.

4. U.S. v. Suren Seiranovich Mkrtchyan et al. (U.S. District Court, E.D. Va. – December 5, 2023)

Not publicly available at time of print.

The U.S. has announced the unsealing of war crimes charges in the Eastern District of Virginia against four Russian military officers for their conduct concerning a U.S. civilian national in the context of the Russian invasion of Ukraine in February 2022. The indictment specifically charges torture, inhuman treatment, unlawful confinement, and conspiracy to commit war crimes. As reported in [International Enforcement Law Reporter](#) (subscription required), “this is the first time the Justice Department has pursued these types of cases as war crimes.” According to a [press release](#) from the U.S. Department of Justice’s Office of Public Affairs, Attorney General Merrick B. Garland stated that “the Justice Department will work for as long as it takes to pursue accountability and justice for Russia’s war of aggression.” In addition, he noted that the “charges reflect that the defendants’ alleged actions are not only grave breaches of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, but also violations of U.S. law.”

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Ukraine Register of Damages Elects Board (November 16, 2023)

<https://www.coe.int/cs/web/portal/-/conference-of-participants-of-the-register-of-damage-for-ukraine-elects-its-board>

On November 16, the Conference of the Participants of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine has elected seven members to Register’s Board. The Board is

responsible for drafting the rules and regulations that govern the Register and, according to a [press release](#) from the Council of Europe, it is “ultimately responsible for recording eligible claims in the Register.”

The Board consists of the following members who will serve for a term of three years (with the possibility of one further three year term): Yulia Kyrpa (Ukraine), Norbert Wühler (Germany), Chiara Giorgetti (Italy), Robert Spano (Iceland), Veijo Heiskanen (Finland), Lucy Reed (United States) and Aleksandra Mężykowska (Poland).

2. **Agreement between the United Kingdom and the Republic of Rwanda for the Provision of an Asylum Partnership to Strengthen Shared International Commitments on the Protection of Refugees and Migrants (December 5, 2023)**

https://assets.publishing.service.gov.uk/media/656f51d30f12ef07a53e0295/UK-Rwanda_MEDP_-_English_-_Formatted_5_Dec_23_-_UK_VERSION.pdf

On December 5, 2023, UK Home Secretary James Cleverly signed an agreement with Rwanda concerning asylum seekers. The agreement follows a recent [decision](#) by the UK Supreme Court striking down a previous agreement with Rwanda blocking the government’s policy of sending asylum seekers to Rwanda because, among other things, it concluded that Rwanda was not a safe third country and as such, returning asylum seekers to Rwanda would violate the principle of non-refoulement as contained in the Refugee Convention. As reported by [JURIST](#), Secretary Cleverly noted that the new agreement “addresses all of the issues” that the Court had. The new agreement creates an appellate body made up of judges from different states and reinforces the Independent Monitoring Committee, which oversees the overall implementation of the agreement.