

DIGEST OF CASES REPORTED IN VOLUME 201

Page

Aliens

Asylum claim — Refusal of asylum — Refusal of asylum overturned — Article 1F(c) of Refugee Convention, 1951 — Article 12(2)(c) of European Council Directive 2004/83 — Whether asylum seeker guilty of acts contrary to purposes and principles of United Nations — Whether conviction as member of leadership of terrorist organization sufficient — Whether commission or instigation of terrorist act required — Terrorism — Court of Justice of the European Union, Grand Chamber

Commissaire Général aux Réfugiés et aux Apatrides v. Mostafa Lounani (Case C-573/14)

118

Arbitration

Arbitral Tribunal of International Chamber of Commerce — Arbitral award — Damages — Failure to pay amount awarded — Enforcement proceedings — United Kingdom — Arbitration Act 1996 — Service of proceedings commenced in accordance with Arbitration Act 1996 — Whether service of proceedings must comply with State Immunity Act 1978 — Difficulty effecting service on defendant State — United Kingdom, Supreme Court

General Dynamics United Kingdom Ltd v. State of Libya

535

Claims

Admissibility of claims — Abuse of process — Distinction from abuse of rights — Abuse of process not a new objection — Re-characterisation of objection — Exceptional circumstances not present — Unclean hands — Allegations of sponsoring terrorism — No decision on status of unclean hands doctrine under international law — Whether conditions for unclean hands doctrine satisfied in the circumstances — International Court of Justice

Certain Iranian Assets (Islamic Republic of Iran v. United States of America)

1

Comity

Comity of nations as an interpretative principle — Subjecting State to jurisdiction of the courts of another State — Procedure for service — State Immunity Act 1978 — Obligations of States in the marketplace — Commercial legal obligations of States — United Kingdom, Supreme Court

General Dynamics United Kingdom Ltd v. State of Libya

535

Diplomatic Relations

Diplomats — Diplomats' children — Serious concerns about welfare of children — Immunity — Immunity from civil proceedings — Whether diplomatic immunity preventing local authority from seeking interim care orders — Diplomatic Privileges Act 1964 — Vienna Convention on Diplomatic Relations, 1961 — Whether diplomatic immunity subject to prohibition on torture and inhuman and degrading treatment or punishment — England, High Court (Family Division)

London Borough of Barnet v. AG and Others and Secretary of State for Foreign, Commonwealth and Development Affairs

476

Human Rights

Article 26 of American Convention on Human Rights, 1969 — State obligation on progressive realization of rights implicit in the economic, social, educational, scientific, and cultural standards in Charter of the Organization of American States, 1948 — Right to a healthy environment — Right to food and water — Right to cultural identity — Whether rights to a healthy environment, food and water and cultural identity encompassed under Article 26 — Whether economic, social, cultural and environmental rights under Article 26 autonomous and justiciable before the Court — Inter-American Court of Human Rights

Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina

141

European Convention on Human Rights, 1950 — Article 3 — Inhuman and degrading treatment or punishment — Human Rights Act 1998 — Diplomatic immunity — Relationship between prohibition on torture and inhuman and degrading treatment or punishment and diplomatic immunity — Whether diplomatic immunity preventing local authority from seeking interim care order — Whether failure to protect children a

breach of European Convention on Human Rights, 1950 — Whether taking action to protect children a breach of Vienna Convention on Diplomatic Relations, 1961 — Declaration of incompatibility — England, High Court (Family Division)

London Borough of Barnet v. AG and Others and Secretary of State for Foreign, Commonwealth and Development Affairs

476

Human Rights Act 1998 — European Convention on Human Rights, 1950 — Article 3 of European Convention prohibiting torture and inhuman or degrading treatment or punishment — Article 6 of European Convention providing right to a fair trial — Conditions within prisons and courts of Northern Cyprus — Evidence relevant in European Convention on Human Rights claims — Extent of territorial jurisdiction — Whether claimant within jurisdiction of United Kingdom for purposes of European Convention — Whether claimant being granted permission to challenge provision of material to Northern Cyprus police on this ground — England, High Court, Queen's Bench Division

Regina (Akarca) v. Chief Constable of the West Yorkshire Police

423

Right to judicial protection within a reasonable time — Whether provincial court exercising unreasonable delay in determination of Decree concerning allocation of land — Whether violation of Article 8(1) of American Convention on Human Rights, 1969 — Inter-American Court of Human Rights

Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina

141

Right to property — American Convention on Human Rights, 1969 — Article 21 — Whether Argentina providing indigenous communities effective title over their ancestral communal property — Article 2 — Obligation of States to adopt domestic legal provisions — Whether Argentinian domestic law providing adequate legislative and administrative procedures to guarantee right to communal property — Article 1(1) — Obligation of States to protect rights of persons under their jurisdiction — Article 23(1) — Right to participate — State obligation to consult indigenous peoples on projects or works on communal property — Inter-American Court of Human Rights

Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina

141

Human Rights (*cont.*)

Treaties — European Convention on Human Rights, 1950 — Article 6 — Access to jurisdiction of the courts — Relationship between Article 6 and State immunity — Whether requirement for service through diplomatic channels impeding Article 6 rights — United Kingdom, Supreme Court

General Dynamics United Kingdom Ltd v. State of Libya

535

Whether State's withdrawal of its declaration under Article 34(6) of the Protocol constituting a regression of rights — Whether depriving State's citizens of a regional judicial redress mechanism through its withdrawal a human rights violation — Whether State declarations under Article 34(6) of the Protocol conferring subjective rights on individuals and non-governmental organizations — African Court on Human and Peoples' Rights

Hossou and Adalakoun v. Republic of Benin (Application No 16/2020)

89

International Court of Justice

Alleged violations of Treaty of Amity, Economic Relations, and Consular Rights, 1955 — Alleged violations of customary rules of international law on sovereign immunity — Preliminary objections — Jurisdiction of the Court — Admissibility of claims — International Court of Justice

Certain Iranian Assets (Islamic Republic of Iran v. United States of America)

1

Jurisdiction — Jurisdiction under Article XXI(2) of Treaty of Amity, Economic Relations, and Consular Rights, 1955 — Jurisdiction *ratione materiae* — Article XX(1)(c) and (d) of 1955 Treaty — Whether 1955 Treaty including restrictions on scope of International Court of Justice jurisdiction — Issue already decided in Court's earlier jurisprudence — Confirmation of earlier findings — Whether certain provisions of 1955 Treaty incorporating rules of customary international law on sovereign immunity — Article IV(2) — Article XI(4) — Article III(2) — Article IV(1) — Article X(1) — Definition of "company" under Article III(1) of 1955 Treaty — Whether Central Bank of Iran a "company" under 1955 Treaty — Relevance of an entity's functions for it to be a "company" under 1955 Treaty — Determination of functions a matter for merits — Whether objection possessing an exclusively preliminary character — International Court of Justice

Certain Iranian Assets (Islamic Republic of Iran v. United States of America)

1

International Organizations

Immunity from jurisdiction — International Bank for Reconstruction and Development (“IBRD”) — IBRD Articles of Association — Agreement between Austria, IBRD, International Finance Corporation and Multilateral Investment Guarantee Agency Regarding the Establishment of Liaison Offices in Vienna, 2011 — Relevance of dispute settlement provisions in treaties for questions of immunity of international organizations — Implicit waiver — Obligation to pay court fees in civil proceedings — Treaty interpretation — Treaty authenticated in several languages — Whether Article VII Section 9 of IBRD Articles of Agreement and Article 10(3) of Establishment Agreement providing for an exemption to pay court fees — Whether Austrian authorities having jurisdiction over matter — Austria, Supreme Administrative Court

International Bank for Reconstruction and Development (IBRD) Court Fees Case (Case No 2018/16/0017)

402

International Tribunals

African Court on Human and Peoples’ Rights — Direct connection of case’s merits to provisional measures request — Whether an application to institute proceedings before the Court void if unsigned — African Court on Human and Peoples’ Rights

Hossou and Adhlakoun v. Republic of Benin (Application No 16/2020)

89

Jurisdiction — Whether the African court having jurisdiction to decide on/revoke State’s decision to withdraw its declaration under Article 34(6) of the Protocol — Whether State declarations accepting the jurisdiction of the African Court optional — African Court on Human and Peoples’ Rights

Hossou and Adhlakoun v. Republic of Benin (Application No 16/2020)

89

Jurisdiction

European Arrest Warrant — Jurisdiction over individuals from unrecognized States — Jurisdiction for crimes committed within England and Wales — Jurisdiction under European Convention on Human Rights, 1950 — England, High Court, Queen’s Bench Division

Regina (Akarca) v. Chief Constable of the West Yorkshire Police

423

Jurisdiction (*cont.*)

Turkish Republic of Northern Cyprus — Whether TRNC capable of being a country of habitual residence for determining jurisdiction in care proceedings — Whether child can retain habitual residence when parent deported from country — Effect of having no place of habitual residence — England, Family Court

Local Authority B v. X, V and T (Re T) 444

Recognition

Recognition of Northern Cyprus — Non-recognition of Northern Cyprus by United Kingdom — Acts amounting to recognition — Co-operation with law enforcement authorities of unrecognized entity — England, High Court, Queen's Bench Division

Regina (Akarçay) v. Chief Constable of the West Yorkshire Police 423

Relationship of International Law and Municipal Law

Customary international law — United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004 — State Immunity Act 1978 — Treaty provisions as an aid to interpretation of domestic law — Whether international custom existing at the time of passage of domestic law — United Kingdom, Supreme Court

General Dynamics United Kingdom Ltd v. State of Libya 535

Treaties — Treaty of Guarantee between United Kingdom, Turkey, Greece and Cyprus, 1960 — Need for incorporation of international treaties — Effect of United Nations Security Council Resolutions 541 and 550 in international and domestic law — England, High Court, Queen's Bench Division

Regina (Akarçay) v. Chief Constable of the West Yorkshire Police 423

Treaties — Refugee Convention, 1951 — European Union law — European Council Directive 2004/83/EC — Framework Decision 2002/475 — United Nations — Relevant Security Council resolutions — Meaning of acts contrary to purposes and principles of United Nations — Court of Justice of the European Union, Grand Chamber

Commissaire Général aux Réfugiés et aux Apatrides v. Mostafa Lounani (Case C-573/14) 118

Treaties — Vienna Convention on Diplomatic Relations, 1961 — Diplomatic Privileges Act 1964 — Diplomatic immunity — European Convention on Human Rights, 1950 — United Nations Convention on the Rights of the Child, 1989 — Serious concerns about welfare of diplomat's children — Relationship between diplomatic immunity and human rights — Whether Diplomatic Privileges Act 1964 and Vienna Convention on Diplomatic Relations, 1961 incompatible with Human Rights Act 1998 and European Convention on Human Rights, 1950 — England, High Court (Family Division)

London Borough of Barnet v. AG and Others and Secretary of State for Foreign, Commonwealth and Development Affairs

476

State Immunity

Employment — Foreign military base — Claimant employed on United States' military base in United Kingdom — Claim for wrongful dismissal and discrimination — State Immunity Act 1978 — Service — Procedure for service — Whether Section 16(2) of State Immunity Act applicable — Meaning of "proceedings" — Whether Section 12 applicable — Whether service must be effected through diplomatic channels — England, Employment Tribunal

Houghton v. USA

525

State Immunity Act 1978 — Service — Procedure for service — Whether Section 12(1) applicable — Whether arbitration claim form or enforcement order a document required to be served — Whether court having discretion to dispense with service on defendant State — Exceptional circumstances preventing service through diplomatic channels — United Kingdom, Supreme Court

General Dynamics United Kingdom Ltd v. State of Libya

535

States

Recognition — Turkish Republic of Northern Cyprus ("TRNC") — Whether TRNC a Member State for purposes of European Council Regulation No 2201/2003 — England, Family Court

Local Authority B v. X, V and T (Re T)

444

Sovereignty — States' withdrawal of declaration under Article 34 (6) of the Protocol to the African Charter on Human and Peoples'

States (*cont.*)

Rights on the Establishment of an African Court, 1998 — Right of a State with respect to treaties — Right to enter and right to withdraw — African Court on Human and Peoples' Rights

Hossou and Adalakoun v. Republic of Benin (Application No 16/2020)

89

Terrorism

United Nations — Meaning of acts contrary to purposes and principles of United Nations — Whether participation in terrorist group constituting acts contrary to principles and purposes of United Nations — Exclusion clause — Article 1F(c) of Refugee Convention, 1951 — Article 12(2)(c) of European Council Directive 2004/83 — Whether acts contrary to principles and purposes of United Nations confined to terrorist offences defined in Article 1(1) of Framework Decision 2002/475 — Court of Justice of the European Union, Grand Chamber

Commissaire Général aux Réfugiés et aux Apatrides v. Mostafa Lounani (Case C-573/14)

118

Treaties

Interpretation — Agreement between Austria, IBRD, International Finance Corporation and Multilateral Investment Guarantee Agency Regarding the Establishment of Liaison Offices in Vienna, 2011 — Dispute settlement provisions — Relevance for questions of immunity of international organizations — Treaty authenticated in several languages — Meaning of terms — Whether Article VII Section 9 of IBRD Articles of Agreement and Article 10(3) of Establishment Agreement providing for an exemption to pay court fees — Austria, Supreme Administrative Court

International Bank for Reconstruction and Development (IBRD) Court Fees Case (Case No 2018/16/0017)

402

Interpretation — Application — Protocol No 10 of the 2003 Act of Accession of Cyprus to European Union — Effect of suspension of *acquis communautaire* to the TRNC — England, Family Court

Local Authority B v. X, V and T (Re T)

444

Interpretation — Context and purpose — Vienna Convention on Diplomatic Relations, 1961 — United Nations Convention on the Rights of the Child, 1989 — European Convention on Human Rights, 1950 — Whether Vienna Convention on Diplomatic Relations, 1961 disturbed by provisions of United Nations Convention on the Rights of the Child, 1989 — Whether conflict between Vienna Convention on Diplomatic Relations, 1961 and European Convention on Human Rights, 1950 — England, High Court (Family Division)

London Borough of Barnet v. AG and Others and Secretary of State for Foreign, Commonwealth and Development Affairs

476

Interpretation — Refugee Convention, 1951 — Article 1F(c) of Refugee Convention, 1951 — Principles and purposes of United Nations — Whether participation in terrorist group contrary to principles and purposes of United Nations — Meaning and scope — Relevant Security Council resolutions — Resolution 1624 — Resolution 1377 — Resolution 2178 — Court of Justice of the European Union, Grand Chamber

Commissaire Général aux Réfugiés et aux Apatrides v. Mostafa Lounani (Case C-573/14)

118

Interpretation — Withdrawal — Whether State's withdrawal an act of sovereignty and a unilateral act — Whether State's withdrawal matter of treaty law — Consent — Rights of States — African Court on Human and Peoples' Rights

Hossou and Adalakoun v. Republic of Benin (Application No 16/2020)

89

