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SCRIPTORIUM

JUSTICIA

PROCEDURAL LAW OF THE INTERNATIONAL COURT OF JUSTICE: INTERPRETATION OF A DECISION

Sergey Punzhin

Article 60 of the Statute of the International Court of Justice stipulates that in the event of a dispute as to the meaning or scope of a judgment, the latter may be interpreted by the Court. The purpose of the interpretation is to clarify the content of the judgment rendered and not to adjudicate upon the dispute de novo. In the process of interpretation the Court cannot pronounce on questions which were not submitted for its consideration within the framework of the original dispute, the decision on which is the subject of the request for interpretation. In the interpretation, the Court must remain strictly within the framework of the original decision and can neither question the binding provisions contained therein nor give answers to questions on which the Court did not speak in the original decision. When interpreting a judgment, the Court must clarify the points which were decided with binding force, i. e. the operative part of the judgment. In this regard, the reasoning of the judgment may be taken into account only in so far as it is inseparable from the operative part. A request for interpretation gives rise to a new case. It is entered in the General List under a separate number that is distinct from the number of the original case. The Court's practice in procedural matters in delivering an interpretation is not uniform and depends on the circumstances of the particular case and on at what stage the Court would be sufficiently informed for making a decision.

Keywords: International Court of Justice; Statute of the Court; Rules of Court; procedural law; interpretation; meaning and scope of the judgment.

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JUS GENTIUM

THE COURT OF THE EURASIAN ECONOMIC UNION: FROM LEGAL OPINION TO THE EFFECTIVE LAW

Tatyana Neshataeva

The Court of the Eurasian Economic Union (EAEU Court) plays a significant role in strengthening Eurasian integration. This Court is a major judicial body of the Union responsible for the legal regulation of relations and the settlement of disputes both between member states and between economic and business entities. The principal operative form of the EAEU Court work is the interpretation of the law of the Union, ensuring legal uniformity and judicial control in the sphere of implementation of the legal norms. One of the main functions of the Court is formal, systemic configuration of the norms of Eurasian law in order to fill the gaps in Union law through the formulation of judicial legal opinions (judicial rules) that consolidate all types of legal regulation that are stipulated by the treaties and are reflected in common unified, coordinated and coherent policies of the EAEU. The Court interprets the norms of international treaties, the decisions of international bodies and the actions of the authorities of the member states. The Court also develops legal opinions on understanding international and supranational legal norms and implementation of these norms, and – in controversial situations – quickly and efficiently covers the existing gaps, eliminates ambiguities and uncertainty in Union law with the aim of eliminating the problematic issues in the process of current Union law enforcement and norm implementation in the member states. At the same time, the important function of the Court is construing the content of the legal act for real norm implementation by its interpretation, as well as betaking the accumulated experience contained in the special – concurring and dissenting – opinions of judges and judicial precedents in the case law of international and supranational courts.

Keywords: Court of the EAEU; international standard control; implementation of supranational norms; precedents; case law; interpretation of international norms; legal opinion; elimination of legal uncertainty.

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JUS COMMUNE

THE EUROPEAN LAW OF RESTRICTIVE MEASURES AFTER FIRST RUSSIAN CASES BEFORE THE EUROPEAN COURT OF JUSTICE

Sergey Glandin

The European Court of Justice (ECJ) has so far handed down four judgments at the suit of the Russian persons designated under EU sanction program: Messrs Rotenberg and Kiselev, as well as Almaz-Antey and Rosneft. Based on the ECJ findings it is possible to make forecasts for other Russian applicants whose lawsuits are pending, and to opine on the international responsibility of the Russian Federation for the annexation of Crimea; attributing responsibility of a State to its residents for destabilisation in a neighboring country and on the goals that the EU wants to achieve by restricting Russian residents. The ECJ has recognised restrictive measures against Russian residents as valid because the restrictions imposed by the EU meet the goals pursued. As soon as Russia's alleged destabilisation actions against Ukraine would be stopped, restrictive measures on Russian residents should be lifted. Using examples of the case-law of ECJ as of 2016 and based on the interpretation of statute instruments in the case of Rosneft (C-72/15), the author concludes the other Russian persons have no prospect to succeed in their delisting cases. In all above cases, the applicants submitted pleas in law, most of which have been dismissed as unfounded. The ECJ cannot substitute the Council in assessment of the evidence, facts and circumstances. Therefore, ECJ review must be limited to checking the rules governing procedure to comply with the statement of reasons; the facts are materially are accurate and that there has been no manifest error of assessment of the facts or misuse of power.

Keywords: restrictive measures; sanctions; European Court of Justice; de-listing; re-listing; rule of law.

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LEX MERCATORIA

ISSUES OF COMPETENCE (JURISDICTION) OF INTERNATIONAL INVESTMENT ARBITRATION TRIBUNALS AND ADMISSIBILITY OF CLAIMS: A REVIEW OF THE MOST NOTABLE CASES (2014–2015)

Ilia Rachkov

The competence (jurisdiction) of international investment arbitration tribunals is one of the most vivid problems arising when a foreign investor tries to settle a dispute with a host state. The dispute settlement procedure often starts with determining the question: does the arbitration tribunal have competence (jurisdiction) to try the case between the foreign investor and the host state? If the tribunal answers this question in the affirmative in a specific dispute, it will proceed to try the dispute on its merits. Thus, foreign investors holding that their rights have been infringed by the host state, provide the tribunal with arguments proving that the tribunal has appropriate jurisdiction. In contrary, host states try to convince the tribunal that it lacks proper jurisdiction. Before bringing a claim to international arbitration tribunals, investors should carefully check whether the respective arbitration body has competence to try and adjudicate the dispute, whereas a state should think about finding arguments denying arbitration tribunal to have required jurisdiction. For this purpose, states, as a rule, use the appropriate wording from the international treaties they plan to conclude, or, otherwise, make the required changes to existing international treaties. In this article, the author provides a detailed review of cases before international investment arbitration tribunals in 2014–2015, with examples of host state objections against the tribunals' jurisdiction and opinions of the tribunals on these objections. The author also presents the cases in accordance with the main questions which arise as the tribunals try to determine and confirm their jurisdiction.

Keywords: International investment law; international investment arbitration; foreign investments; foreign investors; host states; competence (jurisdiction) of the arbitration tribunal.

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JUS CRIMINALE

THE *AL-MAHDI* CASE AND ATTACK AGAINST CULTURAL PROPERTY AS AN INTERNATIONAL CRIME

Ani Harutyunyan

The Al-Mahdi case at the International Criminal Court (ICC) was a signal to armed groups and governments that attacks against cultural property cannot go unpunished. Ahmad Al Faqi Al-Mahdi was convicted by the ICC for committed war crimes of intentionally directing attacks against historical buildings and monuments. Still, while applying the provision of the war crime of attacking cultural property, the Court went beyond the strict content of the war crime of attacking cultural property, as codified in the Rome Statute; "attack" in the context of the Rome Statute has a specific meaning and refers to a combat action during a military operation. The attacks against cultural property in the Al-Mahdi case were not part of a combat action in the course of a military operation. Rather, they were carried out as part of law enforcement activities in the territories controlled by the armed groups. The Al-Mahdi case was a lost opportunity to bring charges of persecution as a crime against humanity before the ICC, even though according to the Rome Statute and customary international law the act of attacking cultural property may amount to a crime against humanity. In addition, both practice and opinion juris provide that attacks against cultural property per se may constitute "another inhumane act" of a crime against humanity. However, the law is blurred and it does not fall under the jurisdiction of the ICC, unlike other crimes against humanity. Nevertheless, the Rome Statute does not hinder the development of this norm of international law.

Keywords: Al-Mahdi case; attack against cultural property; war crime; a crime against humanity; persecution; "another inhumane act".

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ACADEMIA

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THE LAW OF STATE IMMUNITY: FROM EROSION TO TRANSFORMATION

A BOOK REVIEW:

FOX H., WEBB PH. THE LAW OF STATE IMMUNITY. THIRD EDITION. OXFORD : OXFORD UNIVERSITY PRESS, 2015. 704 PP.

Vladislav Starzhenetskiy

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Hazel Fox's and Phillipa Webb's new book provides a useful introduction to the dynamic development of the institute of state immunity over the previous several decades: from the erosion of the concept of an absolute immunity of states to the transformation and adaptation of this legal institution to new realities under pressure of human right's defenses. This fundamental work serves as an encyclopedia on the legal regulation of state immunity in both international law and in national legal systems (namely in Great Britain and the United States). The reader will find not only a detailed description of theoretic questions, a systemic description of the evolution of the legal regulation of state immunity, and many examples of judicial and arbitration practices, but also proposals for reforming this institute. The authors show the ongoing transformation of the regime of state immunity using examples from the judicial practices of states. However, the author of this book review notes that modern state immunity cases can develop in several directions. Some states will accept a narrow concept of immunity, while others will be faithful to a wide concept on a basis of mutuality, making exceptions for states in the first group.

Keywords: international law; sovereignty; state immunity; jurisdiction; human rights.

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