

TRIBUNA

Proliferation of International Courts and Tribunals: Sign of Fragmentation or Strengthening of Contemporary International Law?

Sergey Golubok

Abstract: In the article the extension of international courts and tribunals as institutional aspect of continued fragmentation of international law is considered from the standpoint of influence on the sources of international law as well as within the framework of changing understanding of the idea of international custom and common principles of law. The role of extension of international courts and tribunals in legitimacy of international justice as a whole is also discussed.

Key words: International courts and tribunals; fragmentation of international law; extension of international courts and tribunals; sources of international law; international justice.

PRAXIS

RES JUDICATA

Dispute on “Dispute”: Case Concerning Application of the Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russian Federation*). The Judgment of the International Court of Justice of 1 April 2011

Abstract. The comment reviews the judgment of the International Court of Justice in which it found that it did not have jurisdiction to consider the application lodged by Georgia against the Russian Federation. The judgment is significant not only for the specific case. Of particular interest from the international law perspective are the conclusions the Court reach with respect to 1) the definition of a “dispute” between states as a condition of the Court’s jurisdiction; 2) the interpretation of compromissory clauses in multilateral treaties. This comment provides a short analysis of the conclusions the Court reached with respect to these issues as well as positions taken by judges in their separate and dissenting opinions and declarations.

Keywords. *International Court of Justice. Statute of the International Court of Justice; jurisdiction of the International Court of Justice; International Convention on the Elimination of All Forms of Racial Discrimination; Evidence of the existence of a dispute; Negotiations and procedures provided in the Convention.*

Compliance of Unilateral Declaration of Independence of Kosovo with International Law.
Advisory Opinion of the International Court of Justice of 22 July 2010

Sergey Golubok

Abstract: The author of the comment analyses if the refusal of International Court UN to oppose the right to nations’ self-determination to the principle of territorial integrity of the State means the actual victory of Kosovo’s separatists.

Key words: International Court UN; General Assembly UN; Security Council resolution 1244; advisory opinion; Declaration of Independence.

Gäfgen v. Germany.

The Judgment of the European Court of Human Rights of 1 June 2010

Maxim Timofeyev

Abstract: The comment discusses the judgment delivered by the European Court of Human Rights in case of *Gäfgen v. Germany*, in which the Court ruled that the police threat to use violence in order to extract information about location of the kidnapped child from the suspect amounted to ill-treatment but did not affect the applicant's right to a fair trial.

Key words: European Court of Human Rights; prohibition of torture and inhuman treatment; right to a fair trial; criminal procedure; proof; "fruit of the poisonous tree" doctrine.

Korolev v. Russia.

The Decision of the Chamber of the European Court of Human Rights of 1 July 2010

Vera Rusinova

Abstract: The author of the comment analyses the decision declared by the European Court of Human Rights inadmissible under a new admissibility criterion of "significant disadvantage" introduced by the Protocol №14 to the European Convention which entered into force on 01 June 2010.

Key words: European Court of Human Rights; admissibility of complaint; significant disadvantage; principle of respect for human rights; principle of subsidiarity.

Bannikova v. Russia.

The Judgment of the European Court of Human Rights of 4 November 2010

Maria Suchkova

Abstract: The author of the comment analyses the judgment delivered by the European Court in case of *Bannikova v. Russia*, in which the Court ruled that applicant's plea of incitement was adequately addressed by the domestic courts, which took the necessary steps to uncover the truth and to eradicate the doubts as to whether she had committed the offence as a result of incitement by an *agent provocateur*.

Key words: European Court of Human Rights; right to fair trial; criminal procedure; investigative measures; proof; provocation.

On the Limits of International criminal Law.

Decision of Pre-Trial Chamber II of the International Criminal Court Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010

Gleb Bogush

Abstract: The majority of Pre-Trial Chamber judges widely interpreted the "political" contextual element of crimes against humanity enshrined in article 7 of Rome Statute. From the author's viewpoint, such understanding leads to extension of the subject-matter jurisdiction of the Court and limits of international criminal law as a whole.

Key words: International criminal Court; Rome Statute; jurisdiction of International criminal Court; powers of prosecutor of International criminal Court; admissibility; signs of crimes against humanity.

Repairing the Past and Healing the Present: *Gomes Lund et al. v. Brazil*.

The Judgment of the Inter-American Court of Human Rights of 24 November 2010

Raquel Aldana

Abstract: The author of the comment analyses the judgment of the Inter-American Court of Human Rights, in which the latter for the first time considered a case concerned with crimes committed during the “Dirty War” in Brazil (1972 – 1975). Despite the fact that the acceptance of compulsory jurisdiction of the Inter-American Court by Brazil is restricted in time by the events which have happened after 1998, the Court considered enforced disappearances as permanent and ongoing crimes and it let the Court consider the cases of this category on the merits.

Key words: Inter-American Court of Human Rights; American Convention of Human Rights; right to life; right to access to justice; right to search and to receive the information; enforced disappearances; immunity from criminal prosecution.

EX OFFICIO

Dissenting Opinion of the Judge L.A. Skotnikov Appended to the Advisory Opinion of the International Court of Justice on Accordance With International Law of the Unilateral Declaration of Independence in Respect of Kosovo

Abstract: Judge L.A. Skotnikov evaluates the validity of giving the advisory opinion by the International Court of Justice in regard to compliance of the Unilateral Declaration of Independence in respect of Kosovo to international law. According to his view, the Court should have refused to give an advisory opinion due to the fact that the answer to the General Assembly question depended on the Court’s interpretation of the Security Council decision to establish an appropriate regime for Kosovo, expressed in its Resolution 1244 (1999). International justice has developed a principle according to which a right to give an authoritative interpretation of a legal norm belongs exclusively to the person or body authorized to change or cancel it. The judge also pointed that the Court’s interpretation of the Security Council resolution was defective, as it did not assume responsibility for Kosovo Albanians.

Keywords: International Court of Justice, the UN Security Council, UN General Assembly, an advisory opinion, a unilateral declaration of Kosovo independence.

SCRIPTORIUM

JUSTICIA

Procedural Law of the International Court of Justice: Preliminary Objections (General Part)

Sergey Punzhin

Abstract: The author of the article analyses the procedure of preliminary objections to the jurisdiction of the International Court of Justice or the admissibility of an application for institution of a case that is often used by the States in the practice of the Court. Preliminary objections aim to stop the procedure *in limine litis* and not to let the case be considered on the merits. Except the “preliminary objections” procedure, the objections concerning jurisdiction of the Court and admissibility of requirements can be filed by the States and examined by the Court in other modalities both separately and together with substantive questions.

Key words: International Court of Justice; rules of the Court; procedural law; preliminary objections; jurisdiction of the Court; admissibility of application; decision of the Court.

JUS HOMINUM

Positive Obligations of States as Safeguards of Human Rights and Fundamental Freedoms

Maria Voskobitova

Abstract: The article presents an overview of the recent approach to the positive obligations of the states in accordance with international standards. The author reviews UN Human Rights Committee General comments, particularly General comment 31 [80] that contains more detailed provisions on positive obligations of the states. In addition the author overviews the European Court of Human Rights' approach to the same matter. Particularly, she analyses the judgment delivered in a case of *Rantsev v. Cyprus and Russia* in view of positive obligations of the states.

Key words: Human Rights; international human rights standards; positive obligations of the State; negative obligations of the State; Human Rights Committee; European Court of Human Rights.

Do Legal Persons Have Human Rights?

Case-Law of the European Court of Human Rights and Other International Bodies

Maria Suchkova

Abstract: The European Convention of Human Rights is unique in that it grants *locus standi* before the European Court not only to individuals, but also to legal entities. After examining the approach of other adjudicative human rights bodies to applications submitted by juridical persons, this article explores the nature of the protection granted to legal entities by the European Convention. It then proceeds to analyse the case-law relating to violations of commercial companies' rights to see how the Convention institutions applied the "victim" requirement to complaints submitted by shareholders seeking to pierce the "corporate veil".

Key words: Legal entities; human rights; *locus standi*; victim status; European Court of Human Rights.

JUS CRIMINALE

Gender Issues in International Criminal Justice

Elena Trikoz

Abstract: Author analyses the definition of gender and the treatment of sexual violence by the institutions of international criminal justice. She examines the development of gender-based crimes, outlines the current gender-integrated proceedings and looks at the methods used by the courts to ensure representation of women both as lawyers and as victims.

Keywords: Gender-based crimes, gender-inclusive justice, gender-integrated process, international criminal law, international court and tribunals, Rome Statute of the ICC.

FORUM INCOGNITA

A Tribunal for the Somalian Pirates? Problems and Perspectives of the Criminal Prosecution of Piracy and Armed Robbery at Sea

Vera Rusinova

Abstract: Criminal prosecution of persons detained in the course of fight against piracy off the coast of Somalia is connected with a lot of legal problems, existing both at the national and international levels. Analyzing these difficulties and ways to overcome them the author comes to the conclusion that the creation in this region of a special court for prosecution of the persons, responsible for piracy and armed robbery at sea, is a justified measure able to solve many of the arising problems.

Keywords: piracy, criminal liability, international courts, law of sea, human rights.

HISTORIA

The Trial of Peter Von Hagenbach in 1474

PERSONALIA

IN MEMORAM

To Memory of Anatoly Lazarevich Kolodkin (1928–2011)

ACADEMIA

SCHOLA

The Hidden Potential: Mooting As a Tool of Legal Education

Grigory Vaypan