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International Law in Domestic Courts - Relationship between international and domestic law

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International Law in Domestic Courts

- [Medellin v Texas, Appeal Judgment, No 06-984; 552 US ... \(Supreme Court; ILDC 947 \(US 2008\)\)](#), United States, Supreme Court, 25 March 2008
Keyword: Dualism – International courts and tribunals – International law and domestic law, direct effect – International law and domestic law, incorporation – International judgments, recognition and enforcement – Treaties, application – Treaties, interpretation – Treaties, self-executing – UN (United Nations)
Core issues: Whether the judgment of the International Court of Justice in the *Avena* case was directly enforceable as domestic law in a state court in the United States. – Whether the President of the United States's Memorandum independently required the states to provide review and reconsideration of the claims of the 51 Mexican nationals named in *Avena* without regard to state procedural default rules.
- [Attorney General of the Republic v Makamian](#), Cyprus, Supreme Court sitting as a Court of Appeals, 19 July 2007
Keyword: Children, rights of – International law and domestic law, consistent interpretation – International law and domestic law, transformation – Internet – Travaux préparatoires – Treaties, application
Core issues: Whether domestic courts may be guided by a treaty's explanatory report when applying national implementing legislation.
- [Parliamentary Group of the PD/Die Linke in the German Federal Parliament v Federal Government, Dispute between supreme federal bodies \(Organstreitverfahren\) 2 BvE 2/07; ILDC 619 \(DE 2007\)](#), Germany, Federal Constitutional Court (Bundesverfassungsgericht), Second Senate, 03 July 2007
Keyword: Armed forces – Collective security – International organizations, acts – International peace and security – NATO (North Atlantic Treaty Organization) – Responsibility of states – Treaties, amendments and modification – Treaties, interpretation – Treaties, scope (temporal and territorial)
Core issues: Whether the North Atlantic Treaty has been amended by way of subsequent practice or subsequent agreement of the NATO Member States in a way which would require a renewal of parliamentary consent by the German Federal Parliament – Whether a constitutional principle of peacefulness limits the use of the German Armed Forces in the context of organizations of collective security.
- [Elisabeth von P v Karl Johannes von S, Appeal to Supreme Court, 2 Ob 258/05p; ILDC 463 \(AT 2007\)](#), Austria, Supreme Court, 12 June 2007
Keyword: Expropriation – Heads of State – Human rights, right to property – Immunity from jurisdiction, state officials – Restitution
Core issues: Whether immunity of a foreign citizen who became Foreign Minister while domestic civil (inheritance) proceedings were pending can be effectively waived by the foreign State.
- [Asbjornhor and ors v Minister for Justice, Equality and Law Reform and ors, Judicial review, \[2007\] IEHC 166; ILDC 820 \(IE 2007\)](#), Ireland, High Court, 18 April 2007
Keyword: Asylum – Children, rights of – Deportation – Human rights – Human rights, civil and political rights – Human rights, economic, social, and cultural rights – Human rights, right to education – Human rights, right to family – Human rights, right to privacy – Immigration – International law and domestic law, consistent interpretation – Judicial review – Migrants, rights – Migration – Refugees
Core issues: Whether the deportation of a family with a child with Attention Deficit Hyperactivity Disorder (ADHD), was contrary to the right for respect for private and family life under Article 8 of the European Convention on Human Rights.
- [Sarmadi v Cyprus per the Refugee Review Authority](#), Cyprus, Supreme Court, 03 April 2007
Keyword: Asylum – Burden of proof – Human rights – Human rights, civil and political rights – Human rights, freedom of religion – Human rights, freedom of thought, conscience, and religion – International law and domestic law, consistent interpretation – Judicial review – Refugees – Religion – Soft law – Standard of proof – Treaties, application – Treaties, interpretation – UN High Commissioner for Refugees
Core issues: Whether an asylum seeker needs to demonstrate specialized religious knowledge in order to prove the genuineness of religious conviction for purposes of qualifying for refugee status. – Whether fear of deprivation of religious freedom or of interference with one's human rights is tantamount to

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- [Prosecutor v Milorad Krnojelac](#)
Module: International Criminal Law
Citation: ICL 16 (ICTY 2002)
Jurisdiction/Court: International Criminal Tribunal for the Former Yugoslavia, Trial Chamber II
Date: 15 March 2002
Keywords: Aiding and abetting – Crimes against humanity – Joint criminal enterprise – International courts and tribunals – International crimes
Core issue: Whether Krnojelac was guilty of the charges in the indictment. – Whether liability arose under aiding and abetting or the doctrine of Joint Criminal Enterprise.
- [AA, BB](#)
Module: International Law in Domestic Courts
Citation: ILDC 631 (SI 2006)
Jurisdiction/Court: Slovenia, Constitutional Court
Date: 06 July 2006
Keywords: Due process – Human rights – Human rights, civil and political rights – Human rights, equality before the law – Human rights, freedom from torture and cruel, inhuman, or degrading treatment – Human rights, rights of persons deprived of their liberty – Human rights, right to fair trial – Human rights, right to liberty and security of person – International law and domestic law, consistent interpretation – International law and domestic law, direct effect – International law and domestic law, incorporation – Peremptory norms / ius cogens – Treaties, interpretation
Core issue: Whether an investigation into an incident in which a person was allegedly subjected to torture or inhuman or degrading treatment by the police, and in which a person died during police action, violated the right to an effective remedy under Article 15(4) of the Slovenian Constitution and Article 13 of the European Convention on Human Rights.
- [Nancy Kachingwe, Wellington Chibebe, Zimbabwe Lawyers for Human Rights v Minister of Home Affairs, Commissioner of Police](#)
Module: International Law in Domestic Courts
Citation: ILDC 722 (ZW 2005)
Jurisdiction/Court: Zimbabwe, Supreme Court sitting as a Constitutional Court
Date: 18 July 2005
Keywords: Detention – Human rights – Human rights, civil and political rights – Human rights, freedom from torture and cruel, inhuman or degrading treatment – International courts and tribunals – International courts and tribunals, decisions – International law and domestic law, consistent interpretation
Core issue: Whether the African Charter on Human and Peoples' Rights (26 June 1981) OAU Doc CAB/LEG/67/3 rev.5; 1520 UNTS 217; 21 ILM 58 (1982), entered into force 21 October 1986 ('African Charter') and the International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171, entered into force 23 March 1976 ('ICCPR') are part of the domestic law of Zimbabwe. – Whether the court could rely on international human rights instruments for guidance in interpreting the prohibition of inhuman and degrading treatment under the Constitution of Zimbabwe.

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International Criminal Law

Prosecutor v Milorad Kvojelec

Arbitral Institution/Court: International Criminal Tribunal for the Former Yugoslavia, Trial Chamber II

Date of Decision: 15 March 2002

Date of Analysis: 09 September 2006

Tribunal: David Hunt (Presiding); Florence Ndepele Mwachande Mumba; Liu Daqun

Procedural Stage: Trial Judgment

OUP reference: ICL 16 (ICTY 2002)

Subjects: International criminal law

Keywords: Aiding and abetting – Crimes against humanity – Joint criminal enterprise – International courts and tribunals – International crimes

Core Issues

Whether Kvojelec was guilty of the charges in the indictment.

Whether liability arose under aiding and abetting or the doctrine of Joint Criminal Enterprise.

International Instruments Cited

[Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Establishing the Charter of the International Military Tribunal](#) (8 August 1945) 82 UNTS 279 (annex), entered into force 8 August 1945, [Articles 6\(c\)](#), [9](#), [10](#)

[Law No 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity](#), Allied Control Council for Germany, (1946) No 3 Official Gazette 50, 20 December 1945, [Article 11\(1\)\(c\)](#)

[Charter of the International Military Tribunal for the Far East](#) (19 January 1946), TIAS No 1589, entered into force 19 January 1946, [Article 5\(c\)](#)

[Universal Declaration of Human Rights](#), Resolution 217 A(III); UN Doc A/810 91, UN General Assembly, 1948, [Articles 7](#), [9](#), [13](#), [14](#), [18](#), [19](#), [20](#), [21](#)

[Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field](#), (12 August 1949) 75 UNTS 35, entered into force 21 October 1950, [Articles 3](#), [12](#), [50](#)

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