

Will “due process” ever rein in arbitrary judging?

By Lev Tsitrin

The recent decision of the so-called “International Criminal Court” to issue arrest warrants for Israel’s Netanyahu, Gallant, and – for good measure (and to show court’s even-handedness) the remains of the dead Hamas military chief Mohammed Deif, offered two grotesque spectacles: one of ICC judges so hell-bent on hurting Israel that in their eagerness

they brazenly trample on their own court’s rule of procedure; and the other, equally disgusting one – of the functionaries of various



governments refusing to think critically of the court’s decision, and, instead of laughing ICC off and telling it that as far as their countries are concerned, ICC farce won’t be enforced and Netanyahu will be welcome to visit, piously raise their eyes to heavens and solemnly declare that they will abide by the court’s order and arrest him if he arrives.

I wrote in the past of the outrageous behavior of the federal judges right here in the US, judges who, in the equally brazen violation of due process of the law whose human agents judges are supposed to be, do not impartially weigh parties’ argument on the scale of justice, awarding victory to the stronger one, but instead re-lawyer the case, replacing parties’ argument on their scale with the argument judges think the lawyers ought

to have presented, and then deciding the case for their own argument – giving victory to the party they wanted to win from the get-go, “process” and “impartiality” be damned. When sued for fraud – for such proceedings are clear-cut judicial fraud – judges defend themselves with a self-given, in *Pierson v. Ray*, “absolute immunity” when acting from the bench “maliciously and corruptly.”

ICC judges are clearly cut from the same cloth, acting “corruptly and maliciously” and counting on the same impunity. The rules demand that only states be subject to ICC’s jurisdiction – while “Palestine” is not a state, having time and again refused to settle the conflict and demarcate borders because doing so would be an acknowledgement of the legitimacy of Israeli state? No problem – for the purpose of spiting Israel, ICC “judges” call non-existent “Palestine” a state. ICC must follow the principle of complementarity which gives the court jurisdiction only to prosecute those whom state actors refuse to prosecute – and Israel declared that it would hunt down the perpetrators of October 7 atrocity, thus putting Hamas leaders outside the ICC’s jurisdiction? No problem, ICC “judges” will indict them anyways, so as to appear even-handed: to issue arrest warrants just for Israelis engaged in self-defense will look – and be – antisemitic. Israel already killed the indicted Hamas chieftains? Not to worry, ICC “judges” will, absurdly, issue an arrest warrant for a corpse. One brazen violation of courts’ rules after another, all for the sake of sticking it to Israel.

And what is the reaction to this travesty in the Netherlands, for instance – the country that hosts the ICC? Did Dutch officials order ICC to get out of town, so Hague not be seen as the seat of injustice, telling ICC to relocate to Russia, or Iran, or China, or North Korea – all fit places for a kangaroo court like the ICC? No, this is not what Dutch government said; per [Dutch foreign minister Caspar Veldkamp](#), the Netherlands will “follow the instructions. If

Netanyahu or Gallant land, they will be arrested.”

They really love to “follow the instructions” in the Netherlands, I guess. Eighty years ago – when “the instructions” were to round up Jews – they rounded up the Jews. Now that “the instructions” are to arrest Israeli leaders for defending their country against terrorist armies, they will do so, too. Critical thinking is out of question.

Which is a great shame, for in democracies people should not be bossed over by governments – but should control their governments instead, making sure that the government follows the rules so it does not tyrannize the people. But somehow the courts seem to be out of that picture, as if courts are not government. The people do not control courts. Both at home and abroad, court violations of due process are brazen – and done with absolute impunity.

Will the grotesque ruling of the ICC finally help us turn a critical – rather than pious – eye upon the courts, realizing that their power is arbitrary, and needs to be checked, court rules we rely on to restrict courts’ power being just an empty piece of paper? At present, the legacy press – that presumed “eye” of the public – studiously looks the other way, preferring not to investigate how judges decide cases. May be this time around, the time for public scrutiny of courts has come?

I certainly hope so – after all, Israelis already started publicly debating the procedures used in their courts – and ICC’s brazen illegality just cries for action.

Will it come? Will judges be finally reined in, and forced to follow “due process”? Who knows. May be ICC’s overreach will finally bringing to public attention the arbitrary, illegal nature of so much judging? Let’s hope!

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