HAGUE CASE LAW – LATEST DEVELOPMENTS[1]

International Court of Justice

(1) *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo) (Compensation owed by the Democratic Republic of the Congo to the Republic of Guinea)*

Following its judgment of 30 November 2010 in the case concerning the treatment of Ahmadou Sadio Diallo between the Republic of Guinea (Guinea) and the Democratic Republic of the Congo (DRC), the International Court of Justice (ICJ) decided on 19 June 2012 that the amount of compensation due from the DRC to Guinea for the injury suffered by Diallo should be USD 95,000.

On 30 November 2010 the ICJ ruled that by arresting and detaining Mr. Diallo in the 1990s, the DRC had breached its obligations towards Guinea under Article 9 of the International Convention on Civil and Political Rights (ICCPR), Article 6 of the African Charter on Human Rights (ACHR) as well as under Article 36 of the Vienna Convention on Consular Relations. Further the Court ruled that by expelling Mr. Diallo, the DRC had breached its obligations towards Guinea under Article 13 ICCPR and Article 12 ACHR. Guinea's claims in relation to Diallo's treatment as '*associé*' in his Congolese companies were dismissed by the ICJ.

Guinea sought damages in a total amount of USD 11,590,148 for the non-material injury suffered by Diallo, the loss of personal property by Diallo (including assets in bank accounts), the loss of remuneration by Diallo during his unlawful detention and his unlawful expulsion, and the deprivation of potential earnings. The DRC was of the opinion that it owed USD 30,000 to Guinea for the non-material injury suffered by Diallo.

The Court decided that, on the basis of equitable considerations, an amount of USD 85,000 would provide appropriate compensation for the non-material injury suffered by Diallo (considering, among other factors, the context of Diallo's detention which was linked to his attempts to recover damages from Zaire/DRC), and an amount of USD 10,000 for Diallo's loss of personal property (considering his stay in the DRC for over thirty years and the fact that he had had to transport his property to Guinea or sell it in the DRC). According to the Court, Guinea had failed to establish damages under the other two heads of damage.

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1. See: <www.icj-cij.org/>; <www.icty.org>; <www.unictr.org>; <www.pca-cpa.org/>; and <www.haguejusticeportal.net/>.

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Finally, the Court decided that, should payment be delayed, the post-judgment interest on the principal sum will accrue from 1 September 2012 with 6% per year. Guinea's claim of USD 500,000 for procedural costs was rejected by the Court.

International Criminal Tribunal for the Former Yugoslavia

(1) *The Prosecutor* v. *Šešelj*

On 28 June 2012, Trial Chamber II of the International Criminal Tribunal for the Former Yugoslavia (ICTY) convicted Šešelj of contempt of court and sentenced him to two years' imprisonment. Šešelj was the leader of the Serbian Radical Party and a prominent political figure in the former Federal Republic of Yugoslavia. He is currently on trial and being prosecuted for crimes against humanity and war crimes committed in Bosnia and Herzegovina and Croatia between 1991 and 1994. His trial was suspended indefinitely on 11 February 2009 due to witness intimidation. Šešelj was convicted because he failed to remove confidential information (including four books he authored and six confidential filings submitted by him within the framework of the proceedings before the tribunal) in violation of orders of the Tribunal. It is Šešelj's third conviction for contempt of the tribunal. He was previously convicted on 24 July 2009 (confirmed on appeal on 19 May 2010) as well as on 31 October 2011 for intentionally disclosing the names and other personal information of protected witnesses. The Trial Chamber considered Šešelj's repeated defiance of the Tribunal's orders as an aggravating factor.

International Criminal Tribunal for Rwanda

(1) *The Prosecutor* v. *Ntabakuze (Appeals Chamber)*

On 8 May 2012, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) rendered judgment on appeal in the case against Ntabakuze. In 1994 Ntabakuze served as the Commander of the Para-Commando Battalion of the Rwandan army at Camp Kanombe, Kigali. Ntabakuze was convicted by the Trial Chamber on 18 December 2008 for his involvement in the killing of Tutsis in the Kabeza area, at Nyanza Hill and the *Institut africain et mauricien de statistiques et d'économie* (IAMSEA) in Kigali in April 1994. He was found guilty as a superior of genocide, crimes against humanity and war crimes committed by militiamen and members of his battalion and responsible for his subordinates' preventing refugees at Nyanza Hill from seeking sanctuary.

The Appeals Chamber affirmed Ntabakuze's convictions for genocide, crimes against humanity (extermination and persecution) and war crimes (violence to life) in relation to the killings at Nyanza Hill and IAMSEA. However, the Appeals

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Chamber reversed his convictions for other inhumane acts as a crime against humanity (preventing the refugees at Nyanza Hill from seeking sanctuary); murder as a crime against humanity (for killings at Nyanza Hill and IAMSEA); the Trial Chamber's finding that Ntabakuze was responsible for crimes committed by militiamen; and his convictions for genocide, crimes against humanity and war crimes in relation to the killings in Kabeza (the soldiers involved were not at the time subordinates of Ntabakuze). The Appeals Chamber subsequently reduced his sentence from life imprisonment to 35 years' imprisonment.

(2) *The Prosecutor* v. *Hategekimana (Appeals Chamber)*

On 8 May 2012, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) rendered judgment on appeal in the case against Hategekimana. In 1994 Hategekimana served as Commander of the Ngoma Military Camp in Butare Prefecture. Hategekimana was convicted by the Trial Chamber on 6 December 2010 for his involvement in the abduction, rape and killing of Tutsis at the Ngoma Parish and the Maison Généralice in April 1994. He was found guilty of genocide (a joint criminal enterprise leading to the killing of Salomé Mujawayezu, Alice Mukarwesa, and Jacqueline Mukaburasa and other Tutsi civilians); murder as a crime against humanity (ordering the abduction and killing of Jean Bosco Rugomboka; part of a joint criminal enterprise resulting in the killing of Salomé Mujawayezu, Alice Mukarwesa, Jacqueline Mukaburasa, and Solange Karenz); and, as a superior, the rape of Nura Sezirahiga, as a crime against humanity.

The Appeals Chamber dismissed Hategekimana's appeal, affirmed his convictions, and affirmed his sentence of life imprisonment.

(3) *The Prosecutor* v. *Kanyarukiga (Appeals Chamber)*

On 8 May 2012, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) rendered judgment on appeal in the case against Kanyarukiga. In 1994 Kanyarukiga was a businessman who owned a pharmacy in Nyange *secteur*, Kivumu *commune*, Kibuye *préfecture*. Kanyarukiga was convicted by the Trial Chamber on 1 November 2010 for his involvement in the killing of approximately 2,000 Tutsis in Nyange following the destruction of the Nyange Parish Church on 16 April 1994. The church was destroyed by means of a bulldozer after attempts to burn down the church had failed. He was found guilty of planning genocide and extermination as a crime against humanity.

The Appeals Chamber dismissed both Kanyarukiga's appeal (relating to fair trial rights, the indictment, his alibi, the assessment of the evidence, his position of authority and his motive) and the Prosecution's appeal (relating to Kanyarukiga's involvement in a joint criminal enterprise), affirmed his convictions, and affirmed his sentence of 30 years' imprisonment.

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