HAGUE CASE LAW – LATEST DEVELOPMENTS[1]

International Court of Justice

(1) *Frontier Dispute (Burkina Faso* v. *Niger)*

On 16 April 2013, the International Court of Justice (the Court) rendered its judgment in the dispute between Burkina Faso and Niger concerning a frontier dispute over a section of their common boundary. The jurisdiction of the Court was based on a Special Agreement concluded between Burkina Faso and Niger in 2009 and submitted to the Court by joint notification on 12 May 2010. Upon the request of the parties, the Court determined the course of a particular section of their common boundary and decided that it would nominate three experts at a later point in time by means of an Order to assist the Parties as necessary in the demarcation of their frontier in the area in dispute. The Court did not uphold the request of Burkina Faso to adjudge and declare that its frontier with Niger in two demarcated sectors would follow a course which corresponds to the course recorded in 2009 by a joint mission which surveyed the work of a joint technical commission. According to the Court, these requests fell outside the scope of its jurisdiction – as defined by the Special Agreement – and exceeded the limits of its judicial function.

International Criminal Tribunal for the Former Yugoslavia

(1) *The Prosecutor* v. *Stanišić and Župljanin*

On 27 March 2013, Trial Chamber II of the International Criminal Tribunal for the Former Yugoslavia (ICTY) rendered its judgment in the case against Mićo Stanišić and Župljanin. Mićo Stanišić is the former Minister of the Interior of Republika Srpska; Župljanin is the former Chief of the Regional Security Services Centre of Banja Luka, and (between May and July 1992) was a member of the Crisis Staff of the Autonomous Region of Krajina. They were both prosecuted for war crimes (murder, torture) and crimes against humanity (extermination and persecution through acts of killing, torture, cruel treatment and inhuman acts, unlawful detention, establishing and perpetuation of inhuman living conditions, forcible transfer and deportation, the plundering of property, wanton destruction

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

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of towns and villages, including destruction or wilful damage done to institutions dedicated to religion and other cultural buildings, and the imposition and maintenance of restrictive and discriminatory measures) committed in a large number of municipalities in Bosnia-Herzegovina in 1992 involving thousands of victims and at least 1,735 individually named murder victims.

The Trial Chamber was satisfied that the crimes had been committed and that the crimes could be attributed to Mićo Stanišić and Župljanin. The Trial Chamber held that they had participated in a joint criminal enterprise (JCE) between 1991 and 1995, the purpose of which was to permanently remove Bosnian Muslims, Bosnian Croats, and other non-Serbs from the territory of a planned Serbian state. They had participated in this JCE and contributed to its purpose through their interaction (including ordering, commanding, directing, facilitating) with members of the Serb forces and many of the crimes committed following the violent takeover of municipalities were foreseeable. Mićo Stanišić was found not guilty of extermination as a crime against humanity. The Trial Chamber sentenced both of them to 22 years' imprisonment.

(2) *Prosecutor* v. *Šešelj (Appeals Chamber)*

On 30 May 2013, the Appeals Chamber of the ICTY rendered its judgment on appeal in the case against Šešelj. Šešelj – the former leader of the Serbian Radical Party and a prominent political figure in the former Federal Republic of Yugoslavia – is 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.

On 28 June 2012 Šešelj was convicted of contempt of the Tribunal because he had failed to remove confidential information (including four books he authored and six confidential filings submitted by him within the framework of proceedings before the Tribunal) from his website in violation of the orders of the Tribunal. It was Šešelj's third conviction for contempt of the Tribunal, after convictions on 24 July 2009 (confirmed on appeal on 19 May 2010) as well as on 31 October 2011 (confirmed on 28 November 2012) for intentionally disclosing the names and other personal information of protected witnesses. This time he was sentenced to two years' imprisonment.

The Appeals Chamber rejected Šešelj's ground of appeal that the Trial Chamber had denied his right to a defence and a fair trial because he was not allowed to have the assistance of a case manager, his right to communicate with a legal adviser and case manager was violated, and his sentence was unduly severe. Although the Appeals Chamber found that the Trial Chamber had erred by failing to provide a reasoned opinion regarding its refusal of Šešelj's request for the assistance of a case manager, this error did not invalidate the judgment. The Appeals Chamber affirmed his sentence of two years' imprisonment.

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(3) *Prosecutor* v. *Stanišić and Simatović*

On 30 May 2013, Trial Chamber I of the ICTY rendered its judgment in the case against Jovica Stanišić and Simatović. Jovica Stanišić is the former (Deputy) Head of the Serbian State Security Service; Simatović held various positions in the Serbian State Security Service, and he is the former commander of the Special Operations Unit. They were both prosecuted for war crimes (murder) and crimes against humanity (persecutions, murder, deportations, and other inhumane acts (forcible transfers)) committed between April 1991 and 31 December 1995 against the Croat, Bosnian Muslim, Bosnian Croat, and other non-Serb civilian populations in large areas of Croatia and Bosnia-Herzegovina.

According to the Prosecution, Jovica Stanišić and Simatović participated in a JCE between 1991 and 1995, the purpose of which was the forcible and permanent removal of the majority of non-Serbs, principally Croats, Bosnian Muslims, and Bosnian Croats from large areas of Croatia and Bosnia-Herzegovina. They were charged with participation in this JCE through their interaction (directing, organizing, supplying, financing, supporting and directing) with special units of the Serbian Security Service, in particular a special unit known as the Special Purpose Unit or the Red Berets, and other Serb forces.

The Trial Chamber held that the units involved had committed war crimes and crimes against humanity in Croatia and Bosnia-Herzegovina. However, the Trial Chamber found that these crimes could not be attributed to Jovica Stanišić and Simatović. The Trial Chamber ruled that they did not share the purpose of the joint criminal enterprise; that it was not proven beyond reasonable doubt that they had planned or ordered the crimes; and that their assistance to these units had not been directed towards the commission of these crimes. The Trial Chamber found both men not guilty (by majority) and ordered their immediate release.

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