HAGUE CASE LAW – LATEST DEVELOPMENTS[1]

International Court of Justice

(1) *Questions relating to the obligation to prosecute or extradite (Belgium* v. *Senegal)*

On 20 July 2012 the International Court of Justice rendered its judgment in the dispute between Belgium and Senegal concerning the interpretation and application of several provisions of the Torture Convention, in particular Articles 6(2) and 7(1) of that Convention. According to Belgium, Senegal had breached its obligations under international law, including the Torture Convention, by failing to prosecute or extradite Hissène Habré, the former President of Chad and currently residing in Senegal, in relation to serious crimes including acts of torture committed during his presidency between 1982 and 1990.

The Court concluded that a dispute existed between Belgium and Senegal in relation to the interpretation and application of Articles 6(2) and 7(1) of the Torture Convention and ruled that it had jurisdiction to hear this dispute on the basis of Article 30(1) of the Torture Convention (the preconditions for the jurisdiction of the Court had been met) as well as on the basis of the declarations made by Belgium and Senegal under Article 36(2) of the Statute of the Court. Further, the Court ruled that Belgium's claim was admissible since Belgium and Senegal were both parties to the Torture Convention; Article 6(2) and Article 7(1) of the Torture Convention both qualified as obligations *erga omnes partes*; and Belgium could therefore invoke Senegal's responsibility for a breach of these provisions.

The Court concluded that Senegal had breached its obligations under Article 6(2) of the Convention since Senegal had failed to demonstrate that it had carried out a preliminary inquiry into the facts following the filing of complaints against Habré. Further, the Court concluded that Senegal had breached its obligations under Article 7(1) of the Convention since Senegal had failed to bring criminal proceedings against Habré before its competent authorities for the purpose of prosecution in relation to crimes allegedly committed after Senegal became a party to the Convention in 1987. According to the Court, this obligation existed under Article 7(1) of the Convention, irrespective of the existence of a prior request for the extradition of Habré. Senegal's breach of its obligations under

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

Netherlands International Law Review, LIX: 515-516, 2012
© 2012 *T.M.C. Asser Instituut and Contributors*
doi:10.1017/S0165070X12000368

https://doi.org/10.1017/S0165070X12000368 Published online by Cambridge University Press

Article 7(1) was not affected by a decision of the ECOWAS Court of Justice in relation to Senegal's amendment of its Penal Code in 2007 and was not justified by financial difficulties raised by Senegal nor by its internal laws. Therefore, if Senegal does not extradite Habré, it must take the necessary measures, without further delay, to submit the case of Habré to its competent authorities for the purpose of prosecution.

International Criminal Tribunal for Rwanda

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

On 9 October 2012, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) rendered its judgment on appeal in the case against Gatete. Between 1982 and 1993, Gatete was the bourgmestre of Murambi commune; in 1994, he was a director within the Ministry of Women and Family Affairs of Rwanda. On 31 March 2011, Gatete was convicted by the Trial Chamber of one count of genocide and one count of crimes against humanity (extermination) for his involvement in the killing of Tutsis in Rwankuba sector on about 7 April 1994, the killing of Tutsis at Kiziguro parish on 11 April 1994 and at Mukarange parish on 12 April 1994. He was sentenced to life imprisonment. The Appeals Chamber affirmed Gatete's convictions for genocide and crimes against humanity. However, the Appeals Chamber added – upon an appeal by the Prosecution – a conviction for conspiracy to commit genocide, which the Trial Chamber had dismissed because such a (cumulative) conviction would be based on the exact same conduct. The Appeals Chamber also reduced Gatete's sentence to 40 years' imprisonment due to the delay of his trial.

Erik V. Koppe
(Managing Editor)

https://doi.org/10.1017/S0165070X12000368 Published online by Cambridge University Press