

France, Radio Mille Collines

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Situation, Journal of “Droit International 90” Research Centre, Winter 1995-1996, pp. 48-51; original in French, unofficial translation.]

RSF v. Mille Collines PARIS COURT OF APPEAL First Criminal Appeal Division

Appeal against an order establishing partial lack of jurisdiction and the inadmissibility of a civil suit in criminal proceedings.

Judgment delivered in chambers on November 6, 1995. [...]

Decision taken after deliberation thereof in accordance with Article 200 of the Code of Penal Procedure. [...]

On the merits

[...]

In support of its case the association *Reporters sans frontières* essentially claims that, on the one hand, the four persons to whom it refers [...] were behind the creation, organization, funding and content of the broadcasts of *Radio-Télévision Libre des Mille Collines*, which was a notorious means of inciting the commission of the reported crimes, and, on the other, some of them were members of the Réseau Zéro or “death squads” in Rwanda. [...]

Before examining the admissibility of the civil suit brought by the association *Reporters sans frontières*, the investigating judge ruled on his jurisdiction. [...]

From the perspective of international criminal law, the civil party claims that the French courts have jurisdiction, invoking the provisions of international instruments relating to the repression of genocide, war crimes, crimes against humanity and torture.

In its statement of grounds for appeal the civil party further cites international custom in support of the jurisdiction of the French courts with respect to genocide, war crimes and crimes against humanity.

The Court maintains, however, that in the absence of provisions in domestic law, international custom cannot have the effect of extending the extraterritorial jurisdiction of the French courts. In that respect, only the provisions of international treaties are applicable under the national legal system, on condition that:

- said treaties have been duly approved or ratified by France;
- the provisions of those treaties have in themselves direct effect on account of their content. [...]

The investigating judge also declared that he had no jurisdiction on the basis of the four Geneva Conventions of August 12, 1949 or Additional Protocol II of June 8, 1977, to which France is party.

Under the four Geneva Conventions, which entered into force with respect to France on December 28, 1951, the High Contracting Parties undertake to adopt the legislative measures necessary to punish grave breaches by means of appropriate sanctions.

[From] Articles 49, para. 2, of the First Convention, 50, para. 2, of the Second Convention, 129, para. 2, of the Third Convention, and 146, para. 2, of the Fourth Convention, which are identical in wording, [...]

[i]t may be deduced from the use of the words “*each High Contracting Party shall be under the obligation*” that the above obligations are incumbent solely upon the States Parties.

Moreover, the aforementioned provisions are too general in nature directly to create rules governing extraterritorial jurisdiction in respect of criminal matters, as such rules must be worded in precise terms. [...]

Discussion

1. Does IHL provide that France is competent to prosecute crimes even if they were not committed in France or committed by or against a French citizen? Does France have an obligation to exercise that competence?
2. Are Arts 49(2)/50(2)/129(2)/146(2) respectively of the four Conventions self-executing? Is the argument that their wording places obligations on the Parties and not on their courts relevant? Are those provisions too

general? Is paragraph 1 of those articles self-executing? Could paragraph 2 be self-executing and paragraph 1 not?

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