

France, Dupaquier, et al. v. Munyeshyaka

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: RGDIP, vol. 4, 1996, pp. 1084-1089; original in French, unofficial translation, footnotes omitted.]

DUPAQUIER, *ET AL.* v. MUNYESHYAKA

Indictment Division of the Nîmes Court of Appeal,

France,

March 20, 1996

On June 21, 1995, Maître Rigal, Deputy Bailiff at Nîmes, delivered to the Chief Public Prosecutor in Nîmes a summons on behalf of Jean-François Dupaquier [*et al.*] to proceed without delay with the immediate arrest of Father Wenceslas Munyeshyaka and any other person on French territory alleged to have participated in the Rwandan genocide.

On July 12, 1995 the same persons filed a complaint citing the same acts with the Public Prosecutor of the Paris *Tribunal de Grande Instance* [Court of Major Jurisdiction].

In the complaint and the appended depositions, 16 persons affirmed that in La Sainte Famille parish in Kigali, Father Wenceslas Munyeshyaka had, during the months of April and May 1994 in particular, ill-treated Tutsi refugees by depriving them of food and water, sold his services, delivered the refugees up to the Hutu militia and forced women to have sexual intercourse with him in exchange for their lives.

This religious figure was, according to witnesses, armed and wore a bullet-proof vest, and participated actively in the selection of Tutsis to be handed over to their Hutu enemies for execution.

Since September 24, 1994, Wenceslas Munyeshyaka has taken refuge in France and has been living in Bourg-Saint-Andéol (Ardèche), where he has held the post of parish curate. [...]

Questioned on August 1, 1995, Wenceslas Munyeshyaka denied the acts of which he was accused. A committal warrant was issued against him.

By order of the Indictment Division of August 11, 1995, Wenceslas Munyeshyaka was released under judicial supervision.

Meanwhile, further depositions, testimonies and applications to join the proceedings as civil parties have increased the number of complaints by civil parties, with the result that by September 18, 1995, 15 such applications had been recorded in the file (D45).

In the ruling of partial lack of jurisdiction of January 9, 1996 referred to the Court, the Investigating Judge declared that he did not have jurisdiction to examine the classifications of genocide, crimes against humanity and war crimes and on the basis of the international conventions of December 9, 1948, August 12, 1949 and January 27, 1977; [...]

The claimants in the civil action Jean-Louis Nyilinkwaya [*et al.*], in a brief filed on March 1, claimed that the ruling should be reversed and that the investigating judge, before whom the acts of genocide, crimes against humanity and war crimes had legitimately been referred, had jurisdiction.

Whereas a case has been referred to the Investigating Judge of Privas concerning acts which, assuming that they are established, were committed during April and May 1994 in Kigali (Rwanda) against foreigners by a Rwandan national, Wenceslas Munyeshyaka, who is currently residing in the Ardèche region of France; [...]

Whereas, pursuant to the provisions of Articles 689 *et seq.* of the Code of Criminal Procedure, the presence of the person under investigation in Ardèche does not give the Investigating Judge of Privas jurisdiction to deal with crimes committed abroad by a foreigner against foreigners; [...]

Whereas the jurisdiction of the Investigating Judge of Privas cannot be established on the basis of the international conventions of Geneva of August 12, 1949 relative to the protection of civilians and the condition of prisoners in times of war, which cover different types of situations; [...]

In view of the above

The Indictment Division of the Nîmes Court of Appeal [...]

On the merits sets aside the ruling handed down,

Declares that the acts attributed to Father Wenceslas Munyeshyaka constitute, assuming that they are established, crimes of genocide and complicity in genocide,

Declares that the Investigating Judge of Privas does not have jurisdiction to examine them.

Discussion

1. How can the Geneva Conventions be considered to “cover different types of situations” than that in which Munyeshyaka’s alleged crimes were committed?
2. Was there not an armed conflict in Rwanda? Did Munyeshyaka’s alleged acts not violate the Geneva Conventions? (GC I-IV, Art. 3; P II)
3. Did the Court consider that the rules on universal jurisdiction of the Geneva Conventions were not directly applicable before French courts? That they did not cover violations of the law of non-international armed conflicts? (GC I-IV, Arts 49/50/129/146 respectively)

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