

Zadání pro semináře ze zvláštní části mezinárodního práva veřejného II
Ak. r. 2007-2008
PVP - Mezinárodní právo uprchlické

Situace: Pan X je státním občanem Rwandy, přičemž jeho etnický původ je Hutu. Pan X požádal ihned po překročení hranic v České republice o azyl. Pan X působil ve Rwandě jako novinář. Od roku 1992 pracoval jako editor televizních pořadů pro Rwandskou národní televizi (RNT). V dubnu 1994 za ním přišli do práce dva muži z hnutí *Interahamwe* a sdělili mu, že „pouze 100% spolehliví jedinci mohou zůstat v RNT“. Tito muži mu nařídili sestříhat dokument, který by podporoval boj Hutuů proti Tutsiům. O pár dní později viděl, jak tito dva muži odvádějí jeho pět kolegů z budovy pryč - tyto kolegy už nikdy neviděl. Příslušníci *Interahamwe* mu však osobně ani jeho rodině nikdy nevyhrožovali.

Dokument sestříhaný panem X pojednával krátce o historii Rwandy, útlaku Hutuů ze strany Tutsiů, podpoře Tutsiů ze strany Belgických kolonizátorů a končil převratem, ve kterém Hutuové poráží Tutsie a ujímají se vlády ve Rwandě. Pan X tvrdí, že se snažil zmírnit vyznění natočeného dokumentu, a proto výslovně nevyzýval k zabíjení Tutsiů. Videonahrávka ze soukromých zdrojů však ukazuje, že pan X použil na konci dokumentu slova „Vzhůru do práce!“ (Get to work!). Pan X tvrdí, že ho příslušníci *Interahamwe* donutili k tomu, aby tuto frázi použil.

Pan X v průběhu Rwandského konfliktu utekl do sousední Demokratické republiky Kongo (DRK). Zde získal azyl. V roce 2000 však různé polovojsenské jednotky pod patronací Tutsiů začali překračovat hranice s DRK a vyhledávat v uprchlických táborech mezi příslušníky Hutu původce Rwandské genocidy. V roce 2005 začali navíc panu X vyhrožovat Tutsiové, kteří ho identifikovali jako autora výše zmíněného dokumentu. Pan X hned nato opustil Kongo a přes různé pašerácké skupiny se dostal v roce 2006 do ČR. V lednu 2006 vydal Rwandský prokurátor zatykač na pana X pro podezření ze spáchání zločinů proti lidskosti.

Otázky:

- 1) Jaká vylučující klauzule se na pana X vztahuje? Posuďte tuto otázku jak z pohledu Ženevské úmluvy z roku 1951 (ŽÚ1951), tak z pohledu čl. 12 kvalifikační směrnice (KS).
- 2) Může Česká republika podle ŽÚ1951 či KS *libovolně* rozhodnout, zda-li použít vylučující klauzuli, tj. zamítnout na tomto základě žádost o azyl?
- 3) Vztahuje se vylučující klauzule též na osoby, které *podněcují* k páčání zločinů, aniž by se jejich *páchání* účastnily? Liší se v tomto ohledu nějak vylučující klauzule v ŽÚ1951 a KS?
- 4) Lze na daný případ aplikovat i jiné mezinárodní smlouvy o lidských právech?
 - a. Pokud ano, tak které?
 - b. Poskytuje nějaká mezinárodní smlouva o lidských právech širší ochranu než ŽÚ1951?
- 5) Jakou roli hraje skutečnost, že pan X jednal pod nátlakem? Zprošťuje ho to případné viny?
- 6) Představuje zatykač na pana X sám o sobě důvod pro aplikaci vylučující klauzule?
- 7) Pokud byste zastupovali pana X před OAMP MV ČR, který z důvodů pronásledování byste zvolili za základ Vaší argumentace?

Povinná literatura:

- 1) UNHCR: Aplikace vylučujících klauzulí: Článek 1F Úmluvy o postavení uprchlíků z roku 1951, HCR/GIP/03/05, 4. září 2003 (http://www.unhcr.cz/publ_guides.htm).
- 2) KLEČKOVÁ, R.: Článek 1F Úmluvy o právním postavení uprchlíků a terorismus, Správní právo č. 6/2005, str. 353-363.

Doporučená literatura:

- 1) Níže uvedený výtah o situaci ve Rwandě (Country of Origin Information).
- 2) Příručka UNHCR, čl. 140-163. (http://www.unhcr.cz/publ_guides.htm)
- 3) GILBERT, G.: Exclusion (Article 1F). In FELLER, E., TURK, V., NICHOLSON, F.: *Refugee Protection in International Law*. Cambridge, 2003, str. 425-490.

Country of Origin Information

The background of the genocide in Rwanda

The country's population consists of three homogenous ethnic groups – the Tutsis (14%), Hutus (85%) and Twa (1%). Until 1962 when it gained independence Rwanda used to be a Belgian colony. The Belgian rulers had developed close relations with Tutsis and granted them different privileges.

Once independent, the Hutus outnumbered the Tutsis in the elections in 1963 and a party with Hutu's majority won. In 1973 a Hutu - Habyarimana became president. He founded MRND, declared it the only state party and captured power for another 20 years. Strongly biased for his region, the president's policy discriminated Hutus from elsewhere and all Tutsis.

In 1993 Arusha Accords were signed to prevent another conflict between MRND and RPF (a faction of Tutsis who had fled the country). There was an obligation incorporated therein to avoid distinction between Hutus and Tutsis in public sphere. However, the treaty was not complied with. Hatred between the ethnic groups was even more propagated. At the beginning hate speech was directed first at the members of RPF, later on at all Tutsis and moderate Hutus.

Following the death of Habyarimana on 6 April 1994, genocide was triggered. There was about a million of people killed within a 100 days.

The role of the media in genocide

The media is blamed for forming up the general view that extermination of the Tutsis is inevitable.

In Rwanda, radio is the main means of communicating information. Along with the state-owned Radio Rwanda, a private audiovisual station - RTL station was launched. Not only did it incite racial hatred, exhort to killing, but also helped to indicate and target the places where Tutsis sought refuge (churches, schools). The radio founders, F. Nahimana and J.-B. Barayagwiza were recently found guilty of committing genocide and CAH by ICTR together with H. Ngeze, the publisher of Kangura, in the so-called Media Trial. The role of television

in inciting hatred was rather limited compared to the above media. The RN TV only broadcast three evenings per week. The RN TV addressed a small number of people, only the rich having a TV-set.¹

Up-to-date situation in the country

In the aftermath of the 1994 genocide the new government proceeded towards the “reconciliation” policy. Discriminating measures have been withdrawn.

The to-day government (RPF) condemns the genocidal acts and adopted ORGANIC LAW No. 08/96 of August 30, 1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or CAH. Under this law, the génocidaires have to face legal sanctions, harsher than those in Rwandan Penal Code.

The génocidaires are hereby classified in four categories according to the gravity of the committed act. Sentences are scaled down according to category. There is the death penalty for people falling within the first category, *inter alia* the planners, organizers, instigators, supervisors and leaders of the crime of genocide or of a CAH. Confession is considered as a mitigating circumstance, but those falling within the category 1 and sentenced to death penalty cannot avail themselves of it.² The last execution of the capital punishment took place in 1998 but people are still convicted and sentenced to death penalty.

The Report by European Council of 2004 was critical concerning the investigation of genocide trials in Rwanda.³ Up to now there have been more than 80,000 people accused of genocide. Apparently, prison and judicial capacities lag behind these numbers. In order to unburden the courts, so-called *gacaca* jurisdictions have been created, bringing together communities to help to indicate the génocidaires. Only those accused of crimes within categories 2-4 can be subject to these community courts.

Moreover, ICTR was established by the United Nations to put to trial those listed by its prosecutor. Generally, they contain the “big fish” in the genocide. The tribunal is in need of aid from the Rwandan government to carry out its tasks.

¹IMS assessment mission: The Rwanda media experience from the genocide.

See also Supporting the Post-Genocide Transition in Rwanda – the role of International Community paper of November 2004 http://www.clingendael.nl/publications/2004/20041200_cru_working_paper_32.pdf p. 81

² Article 5 par. 3 in connection with articles 15 and 16 of the Organic Law.

³ IRINNews 2004 Chronology of events.

4.4 Human rights of the prisoners

Fair trial issue is often questioned in relation to the Rwandan courts – especially at the beginning, the right to avail oneself of defence and the presumption of innocence were often violated. With no *prima facie evidence* at hand, some of the accused were detained according to mere allegations. Recently the accused without dossier were released, among them true génocidaires. UNHCR has contested the trustworthiness of the lists of genocide suspects, which are drawn by the Rwandan authorities⁴. For instance, a Radio Rwanda journalist, D. Makeli, was imprisoned for 10 years. In his broadcast he said "The parent is in heaven", which was interpreted as „President Habyarimana is in heaven.“⁵

The complexity of gacaca and normal jurisdiction competence leads to double jeopardy. Some of those released by general courts are tried again. In contrast, some of those responsible escape justice.

Those detained face difficult conditions in the prisons and wait for their trial for years. Around 11,000 detainees died in prison in the period of 1994-2001.⁶ Although now the situation has slightly improved, the conditions can still be regarded inhuman. Big concerns are raised concerning the closure of LIPRODHOR, the only respected HR organisation monitoring provincial levels in Rwanda. Over the preceding years LIPRODHOR used to have problems, facing allegations by the government that it pursues genocidal activities. Following its closure, the role of a watchdog in rural areas of Rwanda will be diminished.⁷

⁴ UNHCR International Protection Considerations in Respect of Rwandan Asylum-Seekers and Other Categories of People of Concern in Continued Need of International Protection, of 10 January 2004, Retrieved from http://www.ecoi.net/pub/bp121_RWAGUI.pdf on February 18, 2005

⁵ See <http://web.amnesty.org/library/Index/ENGAFR470012004?open&of=ENG-RWA>.

⁶ AI Rwanda: The enduring legacy of the genocide and war: Retrieved at www.web.amnesty.org/library/pring/ENGAFR470082004 on February 18, 2005.

⁷ AI Index: AFR 47/001/2005 of 10 January 2005, Amnesty International - Original title: "Human rights organisation forced to close down", Retrieved at <http://web.amnesty.org/library/index/engaf470012005> on February 18, 2005