



INTERNATIONAL COURT OF JUSTICE

The case concerning the obligation of extradition

- Morania vs Carpatia -

1. The Republic of Morania is a developing country situated in Asia, with a population of almost 100 millions people. Morania gained its independence in 1960. Currently, the Constitution of Morania stipulates that the president be elected by the Great National Assembly for a seven-year term, also with the possibility of re-election. The National Party is the most important political force of the country which has held absolute majority in the National Assembly since 1975. The president of Morania has held this office since 1978, having been successively re-elected.
2. The Constitution of Moravia stipulates the existence of capital punishment which, according to the Penal Code, is applied to serious crimes. An important number of NGO's, such as Transparency International and Human Rights Watch, whose objective is the protection of human rights, have repeatedly criticized the low level of protection of civil and political rights from Morania. According to the 2012 Human Rights Watch report regarding the situation of the civil rights of Moravia, "it has been confirmed from numerous reliable sources that the police and the prosecution of Morania employed torture as a mean of obtaining proof and so as to force the admittance of certain crimes within the lawsuits."
3. The Kingdom of Carpatia is a well-developed country situated in Europe, member of the European Union and of The Council of Europe, with a population of 20 million people. The economy of Carpatia is based on services and tourism. The level of economic development and protection of human rights are generally considered to be adequate. Both Carpatia and Morania are UN members, Parties to the Statute of the International Court of Justice, having accepted the compulsory expertise of the International Court of Justice (Morania in 1962 and Carpatia in 1955), according to the Article 36 (2) from the Court's Statute.
4. Ardenia and Romelia are two states situated in the Central Asia which have been through a high state of instability and conflict for a long period of time. The governmental level of control in the two states is low. Taking into consideration this situation, the group "Black Angels" operates within the territory of the states. This group brings together youth belonging to various states and according to their "Program" which is to be found on an internal website, their aim is to "install a new world order through purification". The territory of the Ardenia and Romelia is used for establishing training bases for the "paramilitary wing" of Black Angels.
5. On the 14th February 2015, a plane of the Moranian Airlines company belonging to the Moranian state takes off from the capital of Morania, having as destination the Kingdom of Carpatia. There were a large number of newly married couples on board who had won a one-week trip in Carpatia thanks to a contest organized by an enhancing natality program, developed under the auspices of the President of Morania. One hour after the plane's take-off, the plane is no longer to be found on the radar, disappearing above the ocean. The Republic of Morania declared that it would conduct "the most ample searchings in history". Other states allocate important human and material resources for these operations, but to no avail.
6. On the 28th February 2015, on the site of "Black Angels" appears the information that the missing plane of the Moranian Airlines company landed on an airport controlled by the group, in Romelia. It is shown that the passengers are safe, but that they will remain under the control of the "Black Angels" until the international community had offered four planes with the flying autonomy of

more than 10 000 km. On the 1st of March 2015, the secret services of Marusia and Caledonia - the first two military and economic powers of the world and permanent members of the Security Council - confirm that the airplane is to be found on an airport on the territory of Romelia in a zone controlled by the Black Angels.

7. On the 12nd of March 2015, the Security Council adopts the Resolution 102011 (2015) according to which a number of sanctions against the Black Angels and the people associated with this organization are established. The sanctions are to be applied in accordance with a list drawn up by a Committee composed of the representatives of the member states of the Security Council (in continuation to the „Committe of Sanctions”). There follows the most important elements:

„ The Security Council

Deeply concerned about the activities of the Black Angels,

Seriously preoccupied by the skyjacking of the plane belonging to the Moranian Airlines company from the 14th february 2015,

...

Acting according to the Chapter VII of the UN Charter,

1. Firmly condemns any action of Black Angels which affects the safety of the international civil aviation.

2. Imperatively demands the release of all the hostages.

3. Decides on the establishment of the santions stipulated in the 4th, 5th and 6th below-mentioned paragraphs.

4. The sanctions will be applied to all the people who are members of the Black Angels or associated with the group, or who support their activity in any possible manner, stipulated in the list drawn up by the Committee mentioned at the 5th paragraph.

5. A committee is established for the implementation of the current resolution. The committee is composed of the representatives of the member states of the Security Council. The committee has the competence of drawing up the list with the people who are the object of the measures stipulated in the 6th paragraph, according to the written-formulated proposals of the UN member states.

6. The UN member states are committed to putting an end to all the funds and the resources of the people highlighted in the above-mentioned list in the 5th and 6th paragraphs. Moreover, in the case when the state of citizenship of this person demands the extradition of a person from the list for prosecution, the member states have the obligation to urgently begin the extradition procedure.

7. Decides to take notice of this situation.”

8. On the 20th March 2015, Morania, having the support of Marusia and Caledonia, decides to include the members of the flying crew of the flight MA 270 on the list of sanctions stipulated by the Resolution 102011 (2015), who are suspected of intentionally having highjacked the plane. Mr. Kim is included on the list. He was first-officer for the Moranian Airlines company up until the 1st of March 2015, when he left office in order to establish his residence in Carpatia, where he obtained a job at a local airline company. On the 14th of February 2015, he should have been the first-officer of the MA 270 flight, but

only to demand in the last moment his replacement, invoking problems of health. The Republic of Morania informed the Committee of Sanctions that according to the data possessed, Mr Kim collaborated and supported the activity of Black Angels. The list is communicated to all the UN members.

9. On the 15th of April 2015, the Chief Prosecutor of Morania declares the beginning of the prosecution process of the members of the MA 270 flight for manslaughter attempt, attempt to the safety of the international civil airline and attempt to the safety of the state. The Prosecutor demands the enactment of the capital punishment.

10. Under the conditions where the members of the crew are on the territory of Romelia, which is under the control of the Black Angels, the demand of extradition cannot be put into practice.

11. On the 21st of March 2015, after receiving the list of sanctions mentioned at the 8th clause in the case, the authorities of Carpatia block the bank accounts of Mr Kim. On the 1st of May 2015, Carpatia receives through diplomatic arrangements a demand of extradition coming from the authorities of Morania regarding Mr Kim. In the demand's content there are invoked the articles of the Montreal Convention concerning the repression of the illicit acts against the safety of the international civil airline (1971) and the articles of the Security Council's Resolution 102011 (2015).

12. On the 1st of June 2015, the Court of First Instance of the capital of Kingdom of Carpatia decides on the acceptance of the demand of extradition of Mr Kim. Mr Kim appeals against the decision of the Court. The appeal is rejected on the 1st of July 2015 by the Court of Appeal of the capital of the kingdom of Carpatia. Against this, Mr Kim makes a second appeal. According to it, Mr Kim, who meanwhile hired a new lawyer, invokes the fact that the extradition would lead to the enactment of the capital punishment and that, in the wake of the extradition, he could be submitted to a number of acts of torture. The Supreme Court of the Kingdom of Carpatia rejects the second appeal on the grounds that the demand does not respect the motives of recourse invoked in the Criminal Code. The decision passes on the 1st of September 2015.

13. On the 15th of September 2015, Mr Kim appeals to the European Court of Human Rights. Mr Kim invokes breaching of the Article 6 (*the right to a fair trial*) of the European Convention of Human Rights, showing that he could not call into question the measure taken by the Committee of Sanctions to include him on the list, as well as the Article 3 (*the prohibition of torture, inhuman and infamous treatments*) and the Article 1 from the Protocol no. 6 (*the abolition of the death penalty*). The authorities of the kingdom of Carpatia decide not to apply the decision until the European Court of Human Rights proposes a solution.

14. On the 1st of November and the 1st of February 2016, the Embassy of Morania in Carpatia sends two diplomatic notes, expressing its deepest regrets towards the inexecution of the demand of extradition with the violation of the Resolution 102011 (2015) of the Security Council. Each time, the minister of the

External Affairs of Carpatia responds that the demand will not be executed until the European Court of Human Rights takes a decision.

15. On the 1st of June 2016, the Grand Chamber of the European Court of Human Rights pronounces its decision regarding the case Kim c. Carpatia, laying out that the kingdom of Carpatia has violated the Articles 3 and 6 of the European Court of Human Rights and Article 1 from the Protocol no. 6 through the disposition of the demand of extradition. Mr Kim states out the claim of the revision of the decision of extradition in front of the Supreme Court of Carpatia. On the 1st of December 2016, the Supreme Court decides not to act on the demand of Morania to extradite Mr Kim. In the elaboration of the decision, it must be highlighted that „despite the fact that the Articles 25 and 103 of the UN Charter involve the compulsory character of the resolutions of the Security Council, Carpatia has the primary obligation to respect the most basic human rights”.

16. On the 15th of December 2016, Morania stakes out a claim against Carpatia in the front of the International Court of Justice, which demands: „1. That the kingdom of Carpatia has the obligation of extradition of Mr Kim back to Morania.”

17. In its urgently submitted memorial from the 15th of January 2017, Morania makes a case for the fact that the basis of the Carpatia’s obligations to extradite Mr Kim is the Resolution 102011 (2015) of the Security Council, which prevails comparing with other obligations of Carpatia, in accordance with the Article 103 of the UN Charter. In the counter-memorial submitted on the 15th of February 2017, the kingdom of Carpatia claims the following: i) The Security Council does not have the expertise of deciding compulsory measures, taking into consideration that it did not determine the existence of a „threat towards peace” in accordance with Article 39 of the UN Charter. ii) The Security Council has breached fundamental norms of the international law through its adoption of the Resolution 102011 (2015), such as the right to a fair trial, the prohibition of torture, inhuman and infamous treatments and the abolition of the death penalty. Responding to this, the Republic of Morania states that, according to its constant jurisprudence, the International Court of Justice does not have the expertise to analyze the legality of the resolutions of the Security Council and the resolutions presumed to be valid. In the response submitted by the kingdom of Carpatia, it is presented that this claim is not exact because the fact that the Court refused to examine the legality of the resolutions was due to the precise circumstances of the cases and, in any case, it was not about *jus cogens* violations of norms.

18. The hearings in front of the International Court of Justice take place on the 12th of March 2017. Morania and Cameraia are sides of the Montreal Convention of 1971 with regard to the repression of the illicite acts against the safety of the international civil safety and the International Agreement for Civil and Political Human Rights of 1966, as well as of the Convention of Vienna concerning the right of the treaties of 1969. Carpatia is part of the Convention against torture and other cruel, inhumane and infamous treatments . Morania signed the Convention, but did not ratify it.

Jurisprudence to study for the preparation of the case

The International Court of Justice

- The admission of a state in the UN Advisory Opinion, 1948
- Certain spendings of the UN Advisory Opinion, 1962
- The juridical consequences of the continuous presence of the South Africa in Namibia, with the breaching of the Resolution of the Security Council 276 (1971);
- The interpretation and application of the Montreal Convention of 1971 with regard to the Lockerbie incident, order concerning the conservative measures, 1992
- The obligations of judging or extraditing, Belgia c. Senegal, 2012

The European Court of Justice

- Kadi (all the phases, including the Court of First Instance)

The European Courts of Human Rights

Nada v. Switzerland

Al Dulimi and Montana Management v. Switzerland

International Criminal Tribunal of the former Yugoslavia

Prosecutor v. Tadic, Appeals Chamber, Decision on the Defence Motion on Jurisdiction