[TRANSLATION]

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AS TO THE FACTS

The applicant, [Mr Chen Yonghong], was born in 1954 and is a Chinese national with Taiwanese nationality. When the application was lodged, he was being held in a prison at Coloane in Macao. He is represented before the Court by Mr J.L. da Cruz Vilaça, Mr L.M. Pais Antunes and Mr R. Oliveira, of the Lisbon Bar.

A. The circumstances of the case

The facts of the case, as presented by the parties, may be summarised as follows.

The applicant was arrested by the Macanese police on 27 May 1999 under an international arrest warrant issued by the Nanjing (People's Republic of China) State Security Department on suspicion of fraud, within the meaning of Articles 152 and 266 of the Chinese Criminal Code.

On 1 July 1999 the Chinese Ministry of Foreign Affairs lodged a formal request with the Portuguese Embassy in Peking for the applicant's extradition. The request was forwarded to the Governor of Macao, who, on 9 July 1999 and in accordance with the relevant domestic legislation, gave leave for the extradition proceedings to continue. The case file was therefore lodged for consideration by Macao Higher Court of Justice (*Tribunal Superior de Justiça*).

In a judgment of 20 August 1999, the Higher Court of Justice authorised the applicant's extradition. It relied essentially on the fact that the offence of which the applicant was accused was punishable not by death, but at most by life imprisonment. The Chinese Ministry of Foreign Affairs had given an assurance that that penalty would not be imposed on the applicant.

On 6 September 1999 the applicant appealed against that decision to the full court of the Higher Court of Justice relying in particular on the fact that Article 266 of the Chinese Criminal Code also contained a cross-reference to Article 264 of that Code, which provided that the death penalty could be imposed for the offences concerned. He also maintained that the assurances given by the Chinese Ministry of Foreign Affairs could not be regarded as credible as they were not binding on the Chinese courts.

In a decision of 3 November 1999, the Higher Court of Justice, sitting as a full court, dismissed the appeal and upheld the impugned judgment.

B. Relevant domestic law

By virtue of Article 292 of the Portuguese Constitution and the joint declaration made by Portugal and China on 13 April 1987, Macao is considered a Chinese territory under Portuguese administration until the date appointed for the transfer of sovereignty to China (20 December 1999).

Under the terms of Article 2 of the Basic Law of Macao (which was adopted by the Portuguese Parliament, on the proposal of the Macanese legislative assembly, on 17 February 1976, and amended on 14 September 1979, 10 May 1990 and 29 July 1996), Macao is deemed to be a "juristic person of domestic public law". For the time being and until 20 December 1999, the Portuguese Constitution is applicable to Macao by virtue of the Basic Law. However, laws of the Portuguese Republic are applicable in Macao only if they have been published in the territory's official gazette.

The Governor has primary responsibility for the administration of Macao. He is accountable to the President of the Portuguese Republic.

The territory has its own judicial organisation. An appeal used to lie against decisions of the Macao Higher Court of Justice, either to the Supreme Court or, in constitutional cases, to the Constitutional Court of Portugal. However, by Decree no. 118–A/99 of 20 March 1999, the President of the Republic decided, in accordance with the Basic Law, that the Macanese courts would have exclusive jurisdiction for the entire territory from 1 June 1999.

The extradition rules applicable in Macao are to be found in Legislative-Decree no. 437/75 of 16 August 1975, which provides for an initial administrative phase after which the Government may give leave for the extradition proceedings to continue. Thereafter it is for the courts to determine whether the request for extradition is lawful.

COMPLAINTS

The applicant alleges that his extradition to China would entail a violation of Article 1 of Protocol No. 6 and of Articles 3 and 6 of the Convention.

PROCEDURE

The application was lodged on 9 September 1999 and registered on 13 September 1999.

On 9 September 1999 the applicant requested the Court to apply Rule 39 of the Rules of Court and to recommend that the Portuguese Government should not proceed with his extradition to China.

On 14 September 1999 the Chamber decided not to recommend that the Government should adopt the temporary measure in issue.

AS TO THE LAW

The applicant alleged that his extradition to China would entail a violation of Article 1 of Protocol No. 6 and of Articles 3 and 6 of the Convention.

He declared that he was aware that Portugal had not made a declaration under Article 56 of the Convention or Article 5 of Protocol No. 6 extending application of the Convention to the territory of Macao. However, referring *inter alia* to the Drozd and Janousek v. France and Spain judgment of 26 June 1992 (Series A no. 240), he maintained that Portugal's responsibility was engaged under Article 1 of the Convention since Portugal exercised its jurisdiction over the territory. The applicant observed that it was the Governor of Macao, the main representative of the Portuguese administration, who, in the exercise of his discretionary powers, had decided that the extradition proceedings should continue. Without that decision, the request would not have proceeded for final decision by the Macanese courts.

The Court considers that it must first examine whether it has jurisdiction *ratione loci*.

In that connection, it refers to the wording of Article 1 of the Convention:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of th[e] Convention."

As regards the relevant parts of Article 56, they read as follows:

> "1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
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> …
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> 4. Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention."

Protocol No. 6 contains a similar provision at Article 5.

The Court acknowledges from the outset that, as the applicant submitted, the term "jurisdiction" is not limited to the national territory of the High Contracting Parties; their responsibility can be involved because of acts of their authorities producing effects outside their own territory (see the Drozd and Janousek judgment cited above, p. 29, § 91).

It observes, however, that Article 1 of the Convention must be read in the light of Article 56. The latter provision enables the States to lodge a declaration extending the Convention to territories for whose international relations they are responsible and thus to bring issues relating to such territories within the ambit of the Convention. An essential feature of the system established by Article 56 is that the Convention cannot apply to acts of the authorities of such territories, nor to the policies implemented by the Government of the Contracting Party concerned in the exercise of their responsibilities for those territories, unless a declaration extending the ambit of the Convention has been made.

Thus, the European Commission of Human Rights has had occasion to declare that it had no jurisdiction to hear an application concerning events that had occurred in the territory of Hong Kong, as the United Kingdom had not made a declaration under former Article 63 of the Convention (see the decision of the Commission in Bui van Thanh and Others v. the United Kingdom, application no. 16137/90 of 12 March 1990, Decisions and Reports 65, p. 330).

Therefore, in the absence of a declaration by Portugal under Article 56 of the Convention regarding the territory of Macao, the Court is bound to conclude that it has no jurisdiction *ratione loci* to examine the present application.

As regards the applicant's argument that the Governor of Macao engaged the responsibility of Portugal by authorising the extradition proceedings against the applicant to continue, the Court notes that that was merely a preparatory step since, under the extradition procedure applicable in the instant case, it was for the judicial authorities to take the final decision on the request for extradition.

The Court notes, lastly, that since 1 June 1999 the courts of Macao have had exclusive jurisdiction for the whole of the territory such that no Portuguese court will be called upon to review the decisions of those courts.

In the light of the foregoing, the Court considers that the application must be dismissed, in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the complaint inadmissible.