

The court ruled that the proceedings alleging the commission of crimes against humanity by Barbie, a German citizen, arose not only under internal French law, but also under "un ordre répressif international auquel la notion de frontiere et les règles extraditionnelles qui en découlent sont fondamentalement étrangères". Professor Rousseau describes this theory as an audacious innovation which goes against the principles of traditional international law. This rests on the coexistence of independent states exercising their respective jurisdictions in the interior of a space physically localised and juridically limited.

In finding jurisdiction under French law, the court indicated that jurisdiction resulted from Article 4 of the London Agreement of 8 August 1945 and Article 6 of the annexed Statute of the International Military Tribunal of Nuremburg as well as the Declaration of Moscow 30 October 1943. Reliance could also be had on the French law of 26 December 1964 which supports these provisions. Given the nature of these crimes, these provisions, in view of the Court, are in conformity with the principles of international law recognised by the community of nations.

REFUGEE - DEPORTATION - POLITICAL ASYLUM - Immigration and Naturalisation v. Stevic. No. 83-973. Supreme Court of the United States, 5 June 1984. Unreported.

This case involved a Yugoslav who contended that his anti-communist activities in the US would place him in danger if he were deported.

The Supreme Court unanimously reversed a decision of the Court of Appeals (678F.2d 401 (1982)) that as a result of the enactment of the Refugee Act, 1980, an alien no longer had the burden of showing "a clear probability of persecution" but instead could avoid deportation by showing a "well founded fear of persecution". The latter language is contained in the UN Protocol Relating to the Status of Refugees to which the US had adhered since 1968. According to Stevens J., the law was changed because of "... a desire to revise and regularise the procedure governing the admission of refugees into the United States. The primary substantive change Congress intended to make under the Refugee Act, and indeed in our view the only substantive change even relevant to this case, was to eliminate the piecemeal approach to the admission of refugees ...". "The amendment ... was expressly recognized to be a mere conforming amendment added 'for the sake of clarity', and was plainly not intended to change the standard."

Both parties had assumed that the standard for avoiding deportation and the standard applicable to requests for discretionary asylum. However the Court pointedly insisted that it had not been called upon to decide this question: "We do not decide the meaning of the phrase 'well founded fear of persecution' which is applicable by the terms of the Act and regulations to request for discretionary asylum."