

# EUROPEAN COURT OF HUMAN RIGHTS

## BANKOVIĆ AND OTHERS

V.

BELGIUM AND 16 OTHER CONTRACTING STATES

19.12.2001

(Press release issued by the Registrar)

### 1. Principal Facts

The application was brought by six Yugoslav nationals, living in Belgrade, the Federal Republic of Yugoslavia ("FRY"). Vlastimir and Borka Banković, born in 1942 and 1945 respectively, applied to the Court on their own behalf and on behalf of their deceased daughter, Ksenija Banković. Živana Stojanović, born in 1937, applied on her own behalf and on behalf of her deceased son, Nebojsa Stojanović. Mirjana Stoimenovski, applied on her own behalf and on behalf of her deceased son, Darko Stoimenovski. Dragana Joksimović, born in 1956, applied on her own behalf and on behalf of her deceased husband, Milan Joksimović. Dragan Suković, applied in his own right.

The case concerned the bombing by the North Atlantic Treaty Organisation ("NATO") of the Radio Televizije Srbije (Radio-Television Serbia, "RTS") headquarters in Belgrade as part of NATO's campaign of air strikes against the FRY during the Kosovo conflict. In the early hours of 23 April 1999, one of the RTS buildings at Takovska Street was hit by a missile launched from a NATO aircraft. Two of the four floors of the building collapsed and the master control room was destroyed. Sixteen people were killed, including Ksenija Banković, Nebojsa Stojanović, Darko Stoimenovski and Milan Joksimović and another 16 were seriously injured, including Dragan Suković.

The case is brought against the 17 member States of NATO which are also Contracting States to the European Convention on Human Rights: Belgium, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey and United Kingdom.

### 2. Complaints

The applicants complained that the bombardment of the RTS headquarters by NATO violated Articles 2 (right to life), 10 (freedom of expression) and 13 (right to an effective remedy) of the European Convention on Human Rights.

### 3. Procedure

The application was lodged in October 1999. On 14 November 2000 a Chamber of the First Section relinquished the case to the Grand Chamber. On 24 October 2001 the Court held a hearing on the admissibility of the case, the main issues relating to whether the applicants fell within the "jurisdiction" of the respondent States within the meaning of Article 1 of the Convention (obligation to respect human rights), to whether the actions of NATO forces were imputable to the Governments of the respondent States and to whether the applicants had exhausted all remedies within the

meaning of Article 35 § 1 of the Convention.

#### **4. Summary of the Decision**

Noting that the impugned act was performed, or had effects, outside the territory of the respondent States ("the extra-territorial act"), the Court considered that the essential question to be examined was whether the applicants and their deceased relatives were, as a result of that extra-territorial act, capable of falling within the jurisdiction of the respondent States.

As to the "ordinary meaning" of the term jurisdiction in Article 1 of the Convention, the Court was satisfied that, from the standpoint of public international law, the jurisdictional competence of a State was primarily territorial. While international law did not exclude a State's exercise of jurisdiction extra-territorially, the suggested bases of such jurisdiction (including nationality, flag, diplomatic and consular relations, effect, protection, passive personality and universality) were, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States. The Court considered that Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case.

The Court found State practice in the application of the Convention since its ratification to be indicative of a lack of any apprehension on the part of the Contracting States of their extra-territorial responsibility in contexts similar to the present case. Although there had been a number of military missions involving Contracting States acting extra-territorially since their ratification of the Convention (among others, in the Gulf, in Bosnia and Herzegovina and in the FRY), no State had indicated a belief that its extra-territorial actions involved an exercise of jurisdiction within the meaning of Article 1 by making a derogation pursuant to Article 15 (derogation in time of emergency) of the Convention.

The Court also observed that it had recognised only exceptionally extra-territorial acts as constituting an exercise of jurisdiction, when the respondent State, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory, exercised all or some of the public powers normally to be exercised by that Government.

Regarding the applicants' claim that the positive obligation under Article 1 extended to securing the Convention rights in a manner proportionate to the level of control exercised in any given extra-territorial situation, the Court considered that this was tantamount to arguing that anyone adversely affected by an act imputable to a Contracting State, wherever in the world that act may have been committed or its consequences felt, was thereby brought within the jurisdiction of that State for the purpose of Article 1.

The Court considered that Article 1 did not provide any support for the applicants' suggestion that the positive obligation in Article 1 to secure "the rights and freedoms defined in Section I of this Convention" could be divided and tailored in accordance with the particular circumstances of the extra-territorial act in question. The applicants' approach did not explain the application of the words "within their jurisdiction" in Article 1 and went so far as to render those words superfluous and devoid of any purpose. Had the drafters of the Convention wished to ensure jurisdiction as extensive as that advocated by the applicants, they could have adopted a text the same as or similar to the contemporaneous Articles 1 of the four Geneva Conventions of 1949.

Furthermore, the applicants' notion of jurisdiction equated the determination of whether an individual fell within the jurisdiction of a Contracting State with the question of whether that person could be considered to be a victim of a violation of rights guaranteed by the Convention. These were separate and distinct admissibility conditions, each of which had to be satisfied before an individual could invoke the Convention provisions against a Contracting State.

As to whether the exclusion of the applicants from the respondent States' jurisdiction would defeat the *ordre public* mission of the Convention and leave a regrettable vacuum in the Convention system of human rights protection, the Court's obligation was to have regard to the special character of the Convention as a constitutional instrument of *European* public order for the protection of individual human beings and its role was to ensure the observance of *the engagements undertaken* by the Contracting Parties.

The Convention was a multi-lateral treaty operating, subject to Article 56 (territorial application) of the Convention, in an essentially regional context and notably in the legal space of the Contracting States. The FRY clearly did not fall within this legal space. The Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States.

The Court was not therefore persuaded that there was any jurisdictional link between the persons who were victims of the act complained of and the respondent States. Accordingly, it was not satisfied that the applicants and their deceased relatives were capable of coming within the jurisdiction of the respondent States on account of the extra-territorial act in question.

Accordingly, the Court concluded that the impugned action of the respondent States did not engage their Convention responsibility and that it was not therefore necessary to consider the other admissibility issues raised by the parties. The application had therefore to be declared inadmissible.