Chapter 5 Determining the Extra-territorial Effect of the European Convention: Facts, Jurisprudence and the Banković Case

1. The Banković Case

The case of Banković v. Belgium and 16 other countries,1 concerned the question of whether the bombing by States Parties to the European Convention on Human Rights (“ECHR”) of a territory which was not party to the Convention entailed responsibility under the Convention. The facts of the case were simple:

On January 30, 1999, and following a decision of its North Atlantic Council (“NAC”), the North Atlantic Treaty Organisation (“NATO”) announced air strikes on the territory of the Federal Republic of Yugoslavia (“FRY”) in the case of non-compliance with the demands of the international community. Negotiations consequently took place between the parties to the conflict from February 6–23, 1999 and from March 15–18, 1999. The resulting proposed peace agreement was signed by the Kosovar Albanian delegation, but not by the Serbian delegation.

Considering that all efforts to achieve a negotiated, political solution to the Kosovo crisis had failed, the NAC decided on, and on March 23, 1999 the Secretary General of NATO announced, the beginning of air strikes (Operation Allied Force) against the FRY. The air strikes lasted from March 24 to June 8, 1999.

On April 23, 1999, just after 2.00 am approximately, one of the RTS buildings at Takovska Street was hit by a missile launched from a NATO forces’ aircraft. Two of the four floors of the building collapsed and the master control room was destroyed. Sixteen people were killed and another sixteen were seriously injured in the bombing of the RTS building. Five relatives of the deceased and a survivor of the bombing brought a complaint before the Strasbourg Court against the NATO Member States, in so far as they were bound by the ECHR. The applicants argued that the television station had not been a legitimate target; they alleged

breaches of notably Article 2 (the right to life) and Article 10; (the freedom to impart information).

The key question in that case was whether the victims of these bombings fell within the “jurisdiction” of the respondent States. The Court’s answer was negative. Despite the fact that NATO subjected the victims to their bombing operations and caused their deaths, the Court found that the victims were within the jurisdiction of Serbia and not within the jurisdiction of the NATO countries. The decision of the Court was strongly criticised by a number of jurists. 2 Professor Jean-François Flauss believes that the Court, which was already suffering from a heavy

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