

Press release issued by the Registrar

**GRAND CHAMBER JUDGMENT
MARKOVIC AND OTHERS v. ITALY**

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment¹ in the case of *Markovic and Others v. Italy* (application no. 1398/03).

The Court held, by 10 votes to seven, that there had been **no violation of Article 6** (right to a fair trial) of the European Convention on Human Rights.

(The judgment is available in English and French.)

1. Principal facts

The application concerned an action in damages brought by the applicants in the Italian courts in respect of the deaths of their relatives as a result of air strikes against the Federal Republic of Yugoslavia.

The ten applicants are all nationals of the former Serbia and Montenegro and close relatives of people who were killed during the Kosovo conflict when an air strike on the headquarters of *Radio Televizije Srbije (RTS)* in Belgrade on 23 April 1999 by the NATO alliance resulted in 16 deaths.

Dusan and Zoran Markovic were born in 1924 and 1952; their application concerns the death of Dejan Markovic, the former's son and the latter's brother. Dusika and Vladimir Jontic were born in 1948 and 1978; their application concerns the death of Slobodan Jontic, the former's husband and the latter's father. Draga Jankovic was born in 1947 and her application concerns the death of her husband, Milovan Jankovic. Mirjana and Slavica Stevanovic were born in 1945 and 1974; their application concerns the death of Slavisa Stevanovic, the former's son and the latter's brother. Milena, Obrad and Dejan Dragojevic were born in 1953, 1946 and 1975 respectively; their application concerns Mr and Mrs Dragojevic's son and Dejan's brother, Dragorad Dragojevic.

The applicants brought an action in damages in the Rome District Court, as they considered that Italy's involvement in the relevant military operations had been more extensive than that of the other NATO members in that Italy had provided major political and logistical support, such as the use of its air bases by aircraft engaged in the strikes on Belgrade and the *RTS*. The defendants to the action were the Prime Minister's Office, the Italian Ministry of Defence and the NATO Allied Forces Southern Europe (AFSOUTH) Command.

¹ Grand Chamber judgments are final (Article 44 of the Convention).

The Prime Minister's Office and the Italian Ministry of Defence applied to the Court of Cassation for a preliminary ruling on the issue of jurisdiction under Article 41 of the Code of Civil Procedure. In a judgment of 8 February 2002 which brought the applicants' action to an end, the Court of Cassation held that the Italian courts had no jurisdiction because Italy's decision to take part in the air strikes had been a political one and could not, therefore, be reviewed by the courts.

2. Procedure and composition of the Court

The application was lodged on 6 December 2002 and declared partially inadmissible on 12 June 2003. On 28 February 2005 the Government of Serbia and Montenegro requested permission to intervene as a third party and, on 28 April 2005, the Chamber relinquished jurisdiction in favour of the Grand Chamber. On 21 June 2005 the United Kingdom Government was given permission to submit written observations.

A hearing of the Grand Chamber was held in public at the Human Rights Building in Strasbourg on 14 December 2005

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), *President*,
 Christos **Rozakis** (Greek),
 Jean-Paul **Costa** (French),
 Nicolas **Bratza** (British),
 Boštjan M. **Zupančič** (Slovenian),
 Lucius **Caflich** (Swiss),
 Ireneu **Cabral Barreto** (Portuguese)
 Karel **Jungwiert** (Czech),
 John **Hedigan** (Irish),
 Margarita **Tsatsa-Nikolovska** (citizen of "the former Yugoslav Republic of Macedonia"),
 Mindia **Ugrekhelidze** (Georgian),
 Anatoli **Kovler** (Russian),
 Vladimiro **Zagrebel'sky** (Italian),
 Egbert **Myjer** (Dutch),
 David Thór **Björgvinsson** (Icelandic),
 Danutė **Jočienė** (Lithuanian),
 Ján **Šikuta** (Slovakian), *judges*,

and also Lawrence **Early**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

The applicants complained, under Article 6 (right to a fair hearing) of the Convention, read in conjunction with Article 1 (obligation to respect human rights), that they were denied access to a court.

¹ This summary by the Registry does not bind the Court.

Decision of the Court

Article 6

The Italian Government submitted that the applicants had not exhausted domestic remedies as they had failed to resume the proceedings against NATO. The Court said that no concrete example of a civil action being successfully brought against NATO had been provided so that it was not convinced by the Government's argument that the proceedings against NATO would have offered better prospects of success than those against the Italian State. It added that once the applicants had brought a civil action in the Italian courts, there indisputably existed a "jurisdictional link" for the purposes of Article 1 of the Convention. It ruled that Article 6 was applicable and dismissed the Italian Government's preliminary objections.

The Court then reiterated that it was for the national authorities to interpret and apply domestic law and that that rule also applied where domestic law referred to rules of general international law or international agreements. The Court's role was confined to ascertaining whether the effects of such an interpretation were compatible with the Convention.

The Court noted that the Italian Court of Cassation's comments on the international conventions that had been cited by the applicants did not appear to contain any errors of interpretation and that Italian law permitted preliminary jurisdictional points to be raised. Accordingly, it was not possible to conclude from the manner in which the domestic law had been interpreted or the relevant international treaties applied that a "right" to reparation under the law of tort existed in circumstances such as those in the case before it.

As to the Court of Cassation's ruling, it did not amount to recognition of immunity, but was merely indicative of the extent of the courts' powers of review of acts of foreign policy such as acts of war.

Consequently, the Court considered that the applicants' claims had been fairly examined in the light of the Italian legal principles applicable to the law of tort. The applicants had been afforded access to a court, but that access had been limited in scope, as it did not enable them to secure a decision on the merits.

The Court accordingly held that there had been no violation of Article 6.

Judge Costa expressed a concurring opinion, as did Sir Nicolas Bratza, joined by Judge Rozakis. Judge Zagrebelsky, joined by Judges Zupančič, Jungwiert, Tsatsa-Nikolovska, Ugrekhelidze, Kovler and David Thór Björgvinsson, expressed a dissenting opinion. These opinions are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.