EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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# Limitation in 2003 of the jurisdiction of Belgian courts regarding crimes against international humanitarian law: no violation of the Convention

In today's **Chamber** judgment[1] in the case of Hussein and Others v. Belgium (application no. 45187/12) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights.

The case concerned ten Jordanian applicants who lodged a civil-party application with the Brussels investigating judge with a view to the institution of criminal proceedings against high-ranking Kuwaiti officials for crimes under international humanitarian law, in respect of acts linked to the first Gulf War (1990-1991.

In 2001, at the time when the applicants had lodged their civil-party application, Belgian law recognised an absolute form of universal criminal jurisdiction, even in the absence of any connection with Belgium. Subsequently, the Belgian legislature gradually introduced criteria requiring a connection with Belgium and a filtering system for assessing whether a prosecution should be brought. When the 5 August 2003 Act had come into force, the proceedings which the applicants had initially brought in 2001 no longer satisfied the new criteria governing the jurisdiction of the Belgian courts as defined for the future; it could therefore not be retained on that basis.

Ultimately, the applicants' action had failed on the grounds that no investigative act had yet been carried out at the time of the entry into force of the 5 August 2003 Act, and the Belgian courts had in any case lacked jurisdiction to hear and determine the action.

The Court ruled that the Belgian courts had provided a specific and explicit response to the pleas raised by the applicants and had not failed in their obligation to give reasons. It discerned nothing arbitrary or manifestly unreasonable.

The Court also considered that the decision by the Belgian courts, following the entry into force of the 2003 Act, to decline jurisdiction to hear and determine the civil-party application in 2001, had not been disproportionate to the legitimate aims pursued. Indeed, the reasons given by the Belgian authorities (proper administration of justice and the immunities issue raised by the proceedings under international law) could be considered as compelling grounds of public interest.

## Principal facts

The applicants are Jordanian nationals who were born between 1930 and 1973 and live in Amman (Jordan).

During the first Gulf War (1990-1991) the applicants, who were living in Kuwait, were prosecuted by the Kuwaiti authorities and deported to Jordan.

An association was subsequently set up under Jordanian law ("Cooperative Society for the Gulf War Returnees" for the purposes of providing for mutual aid among its members, and in particular of obtaining compensation for the pecuniary and non-pecuniary damage which they had sustained.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In December 2001 counsel for the 7,738 members of the association, including the applicants, applied to join the proceedings as civil parties in their name and on their behalf to the Brussels investigating judge against 74 persons, most of them senior officials of the State of Kuwait, with a view to launching criminal proceedings for genocide on the basis of the 16 June 1993 Act on the suppression of serious violations of international humanitarian law (the so-called "universal jurisdiction law"), as amended by Act of 10 February 1999 and ultimately superseded by the Act of 5 August 2003. They also claimed compensation for pecuniary and non-pecuniary damage sustained as a result of the offences of which they were the alleged victims.

After the proceedings, which ended with the 18 January 2012 judgment of the Court of Cassation, the applicants' action failed on the grounds that no investigative act had yet been carried out at the time of the entry into force of the 5 August 2003 Law and the Belgian courts had in any case lacked jurisdiction to hear and determine the criminal proceedings.

## Complaints, procedure and composition of the Court

The applicants relied, in particular, on Article 6 (right to a fair trial). They submitted that in declaring the proceedings inadmissible and declining jurisdiction, the Belgian courts had provided insufficient reasons for their decisions and deprived them of the right of access to a tribunal.

The application was lodged with the European Court of Human Rights on 13 July 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Georgios A. **Serghides** (Cyprus), *President*,
Paul **Lemmens** (Belgium),
Georges **Ravarani** (Luxembourg),
María **Elósegui** (Spain),
Darian **Pavli** (Albania),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),

and also Milan **Blaško**, *Section Registrar.*

## Decision of the Court

### Article 6 § 1 (right to a fair trial

***Reasoning of domestic judicial decisions***

In the light of its case-law, the Court considered that the domestic courts had provided a specific and explicit response to the plea raised by the applicants and that they had not failed in their obligation to provide reasons. Furthermore, the Court discerned nothing arbitrary or manifestly unreasonable in the domestic courts' interpretation of the concept of "investigative act". Indeed, that interpretation corresponded to the purpose of the 5 August 2003 Act of reducing universal jurisdiction litigation, while also establishing a transitional mechanism in order to prevent cases pending at the investigative stage from being affected. There had therefore been no violation of Article 6 § 1 of the Convention as regards the reasoning of the decisions given by the Indictments Division and the Court of Cassation.

***Access to a tribunal***

The Court noted that the applicants had quite evidently sustained a limitation of their right of access to a tribunal since the Belgian courts had declined jurisdiction to hear and determine the criminal proceedings which they had brought by lodging a civil-party application with the Brussels

investigating judge. This limitation of jurisdiction had been deduced from the transitional mechanism of the 5 August 2003 Act.

The Government explained that the aim of the new system had been to ensure the proper administration of justice. They submitted that the risk of an excessive workload on the courts which would have resulted from an explosion in the number of cases based on universal jurisdiction without any connection with Belgium, as well as the practical difficulties in taking evidence. It also transpires from the preparatory work of the 5 August 2003 Act that the reform had been intended to remedy diplomatic tensions elicited by the recognition of the said absolute universal jurisdiction and the blatant political abuse to which it had led.

The Court considered that the reasons, concerning the proper administration of justice, that had prompted Parliament to examine the bill, as well as the link with the immunities issue which the proceedings had brought to light under international law, could be seen as compelling grounds of general interest.

The Court then noted that in 2001, at the time of the applicants' civil-party application, Belgian law had recognised an absolute form of universal criminal jurisdiction. Subsequently, the legislature gradually introduced criteria requiring a connection with Belgium and a filtering system for assessing whether a prosecution should be brought. When the 5 August 2003 had come into force on 7 August 2003, the proceedings which the applicants had initially brought in 2001 had no longer satisfied the new criteria governing the jurisdiction of the Belgian courts as defined for the future. The case could therefore not be retained on that basis.

Moreover, having regard to the decision of the Court of Cassation to the effect that the jurisdiction of the Belgian courts could only be retained if an investigative act had already been carried out before the entry into force of the Act, the action brought by the applicants had necessarily been doomed to failure if such an act had not been carried out, as indeed the Indictments Division and the Court of Cassation had later found.

Consequently, the Court held that the decision by the Belgian courts, following the entry into force of the 5 August 2003 Act, to decline jurisdiction to hear and determine the civil-party application lodged in 2001 by the applicants had not been disproportionate to the legitimate aims pursued.

There had therefore been no violation of Article 6 § 1 of the Convention.

*The judgment is available only in French.*

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**Press contacts**
During the current health-crisis, journalists can continue to contact the Press Unit via echrpress@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.