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On the web

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Focus

Civil Court of the state
court in Bonn (1.
Zivilkammer des
Landgerichts Bonn)

Case 1 O 361/02, available at
<http://www.uni-kassel.de/fb10/frieden/themen/NATO-Krieg/varvarin-urteil.html>

Bankovic and others v. Belgium and others, Application No. 52207/99, European Court of Human Rights, 12 December 2001

Loizidou v. Turkey, Application No. 15318/89, European Court of Human Rights, 18 December 1996

Ergi v. Turkey, Application No. 23818/94, European Court of Human Rights, 28 July 1998

Tablada v. Argentina, Application No. 11.137, Inter-American Commission on Human Rights, 30 October 1997

Bamaca-Velasquez v. Guatemala, Inter-American Court of Human Rights, 25 November 2000.

For an example of how the right to life is assessed differently in human rights and in humanitarian law, see Bofaxes 250E and 254E.

The right to claim compensation for violations of international humanitarian law: The German judgement on the Varvarin bridge

On 10 December 2003, a German civil court sitting in Bonn denied the victims of a NATO air raid the right to sue Germany and get compensation. Varvarin, a Serbian town, was bombed during the 1999 Kosovo campaign. About 10 people died and 17 were seriously injured when the NATO planes destroyed a bridge considered to be a military target that was located near a busy market place. The lawyers of the 35 Serbian plaintiffs argued that even though German planes did not take part in the raid, Germany, as a member of the NATO coalition, could be held responsible for the attack on the bridge.

The Court found the claim was ill-founded because international law only regulates relations between States and can, therefore, not rule relations between States and individuals. In the case of Serbian victims, it is up to their State to take up the matter with the German authorities and claim compensation for the damage suffered.

The court held that the only exception was when a State had ratified a human rights treaty allowing its citizens to claim certain rights on the international level. In this regard, individuals derive their rights from a particular international convention and are only indirectly subjects of international law. An excellent illustration is the European Convention on Human Rights (ECHR) that grants individuals certain rights vis-à-vis States that ratified it. As Germany ratified the Convention, its provisions may be applicable in the given case. Yet, the German court, citing and following the *Bankovic* judgement of 12 December 2001 of the European Court of Human Rights, affirmed that the Convention was not applicable to acts carried out by its signatories on territories which were not under their full control. The territory of Kosovo was not "within the jurisdiction" of Germany at the time of the attack. This strict interpretation of article 1 of the ECHR by the Court had been severely criticized by human rights lawyers who saw in the ECHR a judicial mechanism to hold accountable States for violating not only human rights law but also international humanitarian law. It consequently seems that the German Court of Bonn is following the rather conservative jurisprudence of the European Court of Human Rights.

The German court also noted that, under general international law, there is no right to complain and claim compensation for damages arising from an armed conflict. Furthermore, there is no procedure for individuals to claim compensation. The Court held that the Hague conventions, the Geneva Conventions and their additional protocols neither grant rights to individuals nor provide for a procedure.

This judgement again raises the question whether there is a need to establish a mechanism giving individuals the possibility to hold States responsible for violating international humanitarian law. Until now individuals have tried to assert their right to life in armed conflict via human rights conventions. While the Inter-American Court/Commission of Human Rights has, on numerous occasions (e.g., *Tablada* and *Bamaca-Velasquez* cases), looked into humanitarian law issues, the European Court of Human Rights has been careful in its judgements (e.g. *Loizidou* case), only indirectly referring to humanitarian law norms (e.g. *Ergi* case). The use of human rights courts to assess violations of international humanitarian law is rather unsatisfactory inasmuch as the right to life is interpreted differently in a human rights context. Also since human rights law does not know of the distinction between civilians/civilian objects and combatants/military objectives, it may arrive at conclusions which are at odds with international humanitarian law, the *lex specialis* in times of armed conflict.

Further the lack of rights of individuals against States infringing humanitarian law norms is in gross contrast with the duties that hinge upon individuals involved in armed conflict. Granting individuals a right to sue States for violations of international humanitarian law would make individuals full subjects of international law, subjects with obligations and rights.

Responsibility

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