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ISSA *v.* TURKEY  
156 ILR 1

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**Jurisdiction — Extraterritorial jurisdiction — Applicants complaining that Turkey violating rights of their relatives under European Convention on Human Rights, 1950 — Ruling on admissibility — Whether issue of jurisdiction requiring examination at this stage — Concept of jurisdiction — Whether Turkey exercising effective overall control of entire area of northern Iraq — Whether exercising effective control over particular portion of that territory — Available evidence — Whether establishing beyond reasonable doubt that Turkish armed forces conducting military operations in area where applicants' relatives killed — Whether applicants' relatives within jurisdiction of Turkey within meaning of Article 1 of European Convention on Human Rights, 1950**

ISSA AND OTHERS *v.* TURKEY<sup>1</sup>

(Application No 31821/96)

*European Court of Human Rights (Second Section)*  
16 November 2004<sup>2</sup>

(Costa, *President*; Baka, Jungwiert, Butkevych, Thomassen and Ugrekhelidze, *Judges*; Gölcüklü, *Judge ad hoc*)

**SUMMARY:**<sup>3</sup> *The facts:*—The applicants, six Iraqi Kurds, complained of the alleged unlawful arrest, detention, ill-treatment and subsequent killing of their relatives in the course of a military operation conducted by the Turkish army in northern Iraq in April 1995. They contended that their deceased relatives, who had been shepherding sheep in the hills above Azadi village in the Spna area,<sup>4</sup> were within the jurisdiction of Turkey since they were under the control and authority of the Turkish armed forces. The Turkish Government denied that Turkish soldiers had been in that area.

The applicants lodged an application against Turkey alleging violations of Articles 2, 3, 5, 8, 13, 14 and 18 of the European Convention on Human Rights, 1950 (“the Convention”). Although the application had been declared admissible on 30 May 2000, the Turkish Government contended that the issue of jurisdiction required examination having regard to the decision in *Banković*.<sup>5</sup> It argued that, since the jurisdiction of Turkey did not extend to northern Iraq

<sup>1</sup> The names of the parties' representatives appear at paras. 2-3 of the judgment.

<sup>2</sup> The judgment became final on 30 March 2005.

<sup>3</sup> Prepared by Ms Karen Lee, Co-Editor.

<sup>4</sup> In Sarsang province near the Turkish border.

<sup>5</sup> *Banković v. Belgium and Others*, 12 December 2001, 123 ILR 94.

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for the alleged violations, Turkey had no responsibility under the Convention. The applicants maintained that *Banković* had merely refined existing case law and that, given that the Court had already ruled on admissibility, no new objection could be raised.

*Held* (unanimously):—The applicants' relatives did not come within the jurisdiction of Turkey within the meaning of Article 1 of the Convention;<sup>6</sup> it was not therefore necessary to examine the applicants' substantive complaints.

(1) The jurisdiction issue had to be examined. The Turkish Government was not precluded from raising the jurisdiction issue at this stage since it was inextricably linked to the facts underlying the allegations. By denying those facts, the Turkish Government had impliedly rejected the applicants' contention that their relatives were within the jurisdiction of Turkey (para. 55).

(2) Since it had not been established that the applicants' relatives were under the authority and/or effective control of Turkey as a result of Turkey's extraterritorial acts, they were not within the jurisdiction of Turkey for the purposes of Article 1 of the Convention.

(a) It followed from Article 1 of the Convention that Contracting States had to answer for any infringement of Convention rights and freedoms committed against individuals placed under their jurisdiction. The exercise of jurisdiction was a necessary condition for a Contracting State to be held responsible for acts or omissions imputable to it which gave rise to such an allegation (para. 66).

(b) The concept of jurisdiction for the purposes of Article 1 of the Convention had to reflect its meaning in public international law. A State's jurisdictional competence was primarily territorial; jurisdiction was presumed to be exercised normally throughout the State's territory. In exceptional circumstances the acts of Contracting States performed outside their territory, or which produced effects there, might amount to the exercise of their jurisdiction within the meaning of Article 1 (paras. 67-8).

(c) According to relevant international law principles, responsibility might be engaged where a State exercised overall effective control of an area situated outside its national territory as a result of lawful or unlawful military action or had authority and control through the lawful or unlawful operation of its agents (paras. 69-71).

(d) Notwithstanding the large number of troops involved, Turkey did not appear to exercise effective overall control of the entire area of northern Iraq. Neither did it exercise, temporarily, effective control over a particular portion of that territory. On the available evidence, it had not been established beyond reasonable doubt that Turkish armed forces conducted operations in the area where the alleged killings took place. In the written statements no particulars had been given identifying the commander or regiment nor was there any detailed description of the soldiers' uniforms. Neither was

<sup>6</sup> For the text of Article 1 of the Convention, see para. 65 of the judgment.

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there any independent eyewitness account of the presence of soldiers in that area or of the detention of the shepherds. It could not be determined whether the deaths were caused by gunfire discharged by Turkish troops or whether those troops reached the Azadi village. Neither was there evidence to rebut the Government's contention that the applicants had made no complaint to Turkish officers regarding their relatives' detention (paras. 72-82).

The following is the text of the judgment of the Court:

### PROCEDURE

1. The case originated in an application (no 31821/96) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Iraqi nationals, Mrs Halima Musa Issa, Mrs Beebin Ahmad Omer, Mrs Safia Shawan Ibrahim, Mrs Fatime Darwish Murty Khan, Mrs Fahima Salim Muran and Mrs Basna Rashid Omer ("the applicants"), on 2 October 1995.

2. The applicants, who had been granted legal aid, were initially represented by Professor Kevin Boyle and Professor Françoise Hampson, lawyers in the United Kingdom. On 23 June 2000 both representatives stood down in favour of Mr Philip Leach, a lawyer working with the Kurdish Human Rights Project ("KHRP"), a non-governmental organisation based in London. On 18 July 2002 Mr Leach stood down and by a letter of 16 August 2004 the applicants informed the Court that they had appointed Mr Kerim Yıldız, the Executive Director of KHRP, as their representative.

3. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

4. The applicants complained of the alleged unlawful arrest, detention, ill-treatment and subsequent killing of their relatives in the course of a military operation conducted by the Turkish army in northern Iraq in April 1995.

5. The application was transmitted to the Court on 1 November 1998, when Protocol No 11 to the Convention came into force (Article 5 § 2 of Protocol No 11).

6. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The

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Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

7. By a decision of 30 May 2000 the Court declared the application admissible.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

9. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

## THE FACTS

### *I. The circumstances of the case*

10. The applicants are six women from northern Iraq, born in 1950, 1970, 1951, 1939, 1949 and 1947 respectively. The first applicant brought the application on her own behalf and on behalf of her deceased son, İsmail Hassan Sherif. The remaining applicants brought the application on their own behalf and on behalf of their deceased husbands, Ahmad Fatah Hassan, Abdula Teli Hussein, Abdulkadir Izzat Khan Hassan, Abdulrahman Mohammad Sherriff and Guli Zekri Guli respectively. The fourth applicant has also brought the application on behalf of her deceased son, Sarabast Abdulkadir Izzat.

11. The facts of the case are in dispute between the parties.

### *A. The applicants' version of the facts*

12. The applicants are shepherdesses who earn their living by shepherding sheep in the valleys and hills surrounding their village of Azadi in Sarsang province near the Turkish border. Their deceased relatives were likewise employed.

13. On 1 April 1995 the applicants learned that the Turkish army, which had crossed earlier into Iraq, was in their area. They saw military activity and witnessed military helicopters transporting soldiers and food in the valley below their village.

14. On the morning of 2 April 1995 İsmail Hassan Sherif, Ahmad Fatah Hassan, Abdula Teli Hussein, Abdulkadir Izzat Khan Hassan, Abdulrahman Mohammad Sherriff, Guli Zekri Guli and Sarabast Abdulkadir Izzat, together with the first, third, fourth and fifth applicants, left the village to take their flocks of sheep to the hills. The second and sixth applicants remained in the village to take care of their children.

15. After the party of eleven shepherds (the first, third, fourth and fifth applicants and Ismail Hassan Sherif, Ahmad Fatah Hassan, Abdula Teli Hussein, Abdulkadir Izzat Khan Hassan, Abdulrahman Mohammad Sherriff, Guli Zekri Guli and Sarabast Abdulkadir Izzat) had walked for fifteen minutes in the direction of Spna, with the four women walking in front of the seven men, they met Turkish soldiers. The latter started to shout abuse at the eleven shepherds, hitting them with their rifle butts, kicking them and slapping them on the face. They separated the women from the men. They told the women to return to the village and then took the men away. The four applicants returned to the village and told the other villagers what had happened.

16. In the meantime, the second and sixth applicants had begun to worry about their husbands. They had heard gunfire and had been told by a fellow villager that the Turkish army was nearby and that the shooting had come from the direction of a cave situated outside the village in the direction of Spna. The villager thought that Turkish soldiers had been firing inside the cave. As a result, the second and sixth applicants together with three other identified women decided to go to look for their men in the direction of the cave. This occurred before the first, third, fourth and fifth applicants had returned to the village. When the second and sixth applicants and the three other women reached the Turkish soldiers they saw the shepherds with them. The soldiers fired in their direction. The women left and went down into the valley. There they met another group of soldiers and requested permission to talk to the men. The soldiers pointed their guns at them and the women left.

17. Instead of going to the village, the five women tried to hide in the valley but were spotted by the soldiers who threatened to kill them. Eventually the women reached the cave, but the men were not there. They saw a military helicopter land. They asked the soldiers for permission to see their men but the soldiers refused. The five women continued their search until about 1 p.m. with no success. They returned to the village and told their fellow villagers about what had happened.

18. Some of the village men, accompanied by members of the Kurdistan Democratic Party ("the KDP"), went to Anshki, a nearby town where a bigger Turkish military unit was based. This unit was responsible for overseeing the military operation in the area. The village men asked the officer in charge to release the shepherds and to allow them to fetch their sheep from the hills. The officer claimed at first that he did not know anything about the shepherds. He subsequently promised the representatives of the KDP that the shepherds would be released. As this did not happen, the KDP representatives made several additional

attempts to obtain information. The officer said that if the shepherds had been detained, they would be released. He eventually gave permission for the men to fetch the sheep. He denied that the shepherds had been detained, but warned the men not to look for them. When the men asked why not, the officer became angry and did not reply. When the men went to fetch the sheep, they looked for the shepherds but could not find them.

19. On 3 April 1995 the Turkish army withdrew from the area around the village and the village men set off in the direction of Spna to look for the seven shepherds who had gone missing. In an area close to where the seven shepherds had last been seen with the Turkish soldiers they found the bodies of Ismail Hassan Sherif, Ahmad Fatah Hassan, Abdulkadir Izzat Khan Hassan, Sarabast Abdulkadir Izzat and Abdulrahman Mohammad Sherriff. The bodies had several bullet wounds and had been badly mutilated—ears, tongues and genitals were missing. The bodies were taken to the main road and from there to Azadi hospital in Dohuk where autopsies were conducted.

20. On 4 April 1995 the KDP held a press conference in Dohuk. Mr SN, the KDP Chief for the Amedi region, stated that, upon receiving information that several shepherds had been arrested by Turkish soldiers, he had visited the Turkish army commander in Kadish and had asked for their release. He had handed him a list of names. The commander had told him that he would take action. The commander had radioed his troops and had told SN that the men and sheep would be released. SN had returned to his office. Having received no news, he had returned to the commander who had promised that the shepherds would be released after the military operation. SN made four or five representations to the commander during that day. The Turkish army having withdrawn during the night, SN returned to the commander the following morning. On that occasion the commander denied that the shepherds had been arrested. He told SN that they might have been killed. At the press conference SN exhibited the list he had given to the Turkish commander containing the names of the seven shepherds. The six applicants were also present at the conference and answered questions.

21. On 5 April 1995 the bodies of Abdula Teli Hussein and Guli Zekri Guli were also found in a state similar to that of the bodies of the other five shepherds.

22. On 5 April 1995 the husband of the first applicant was killed in a separate incident. The four brothers of the husband of the fifth applicant were also killed in a separate incident. These incidents do not form part of the present application.

23. On 7 April 1995 the six applicants and other witnesses were interviewed by Dr RA and Mr Kerim Yildiz in the presence of the *muhtar* of the Tamim area of Sarsang province.

24. The six applicants have since filed several petitions with the authorities of the region requesting that an investigation be conducted into the deaths of their relatives. They applied to the Governor of Dohuk and gave statements. The Governor said that the deaths would be investigated. However, the applicants have not been informed of any follow-up to the Governor's undertaking.

*B. The Government's version of the facts*

25. The respondent Government confirm that a Turkish military operation took place in northern Iraq between 19 March 1995 and 16 April 1995. The Turkish forces advanced to Mount Medina. The records of the armed forces do not show the presence of any Turkish soldiers in the area indicated by the applicants, the Azadi village being ten kilometres south of the operation zone. There is no record of a complaint having been made to any of the officers of the units operating in the Mount Medina region.

*C. Documents and materials submitted by the parties*

*1. Written statements given by the applicants*

26. Following the events, the applicants' statements were taken on 7 June 1995 by Dr Rızgar Amin and Kerim Yildiz in the Azadi village of Sarsang province in the governorate of Dohuk (Iraq) close to the Turkish border.

*(a) Halima Musa Issa*

27. The applicant was the mother of Ismail Hassan Sherif, who was allegedly killed under torture by members of the Turkish army on 2 April 1995, and the wife of Mala Hassan Mohammad Sherif who was also allegedly killed by members of the Turkish army in a separate incident on 5 April 1995. The applicant claimed the following in relation to the alleged incidents:

I and the rest of the villagers heard that the Turkish army was in the area the day before my son was killed. We had seen many military helicopters dropping soldiers and food in the valley near our village.

In the morning of 2 April 1995, I prepared food for my shepherd son as usual. We decided to go out to herd sheep. We thought the Turkish army would not harm us. We (seven shepherds and four women) left the village and walked



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towards the Spna area. The women were walking in front of the men. Then we met many Turkish soldiers who immediately arrested us and began to hit us. They slapped us around the face, kicked us and were very angry and rude. Then they separated us and asked the women to go back to the village. We saw the soldiers take the seven shepherds towards the cave. We went back to the village and told the rest of the village about what had happened.

Some of the men from the village went and asked one of the Turkish army officers to let them retrieve the flocks of sheep from the valley, but he refused and denied having arrested our men. Then some men went to Anshki and asked for the Turkish army officer in charge and requested him to release the shepherds and to let them recover their flocks of sheep. The men went at least five times that day to get information about the men. The Turkish army officer said that if the men were arrested they would be released. He gave permission for the men to bring back the flocks of sheep, but denied knowing anything about our shepherds and warned the men not to go and look for our shepherds. When they asked why they should not go looking for our shepherds, the officer got angry and did not answer.

Once again, some villagers went to the valley to look for our shepherds. They found our flocks of sheep in the early afternoon but still did not know what had happened to our shepherds. We also informed the party (KDP). They said that they met with the Turkish military officers on many occasions but this did not change our men's fate.

The following day, after the Turkish army withdrew from our area, the men went to the surrounding area to look for our shepherds. They found my son and four other shepherds that day. Their bodies were brought back to the main road and from there their bodies were taken to the hospital in Dohuk for medical examination. The other two bodies were found two days later.

The witness replied to the following questions:

Q: Where do you come from originally?

A: We are originally from the village of Terina and have been living in Azadi collective village ever since being moved here under Saddam's regime.

Q: How far is the place where they killed your son?

A: Around  $\frac{1}{4}$  hour's walk from our village.

Q: How old was your son?

A: He was 20 years old.

Q: Who were the other three women who were with you that day?

A: Fatima Darwesh, Fatima Salim and Salia Shawan.

Q: Can they give us testimonies?

A: Yes.

Q: How far from here is the place where they killed your son?

A: About 15 minutes' walk.



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Q: Who do you think killed your son?

A: The Turks.

Q: How do you know that it was the Turks who killed your son?

A: I know it was the Turks. My son was innocent like the other shepherds and the Turks killed them. I saw the Turkish soldiers take away my son and the rest of the shepherds.

Q: Why would the Turkish army kill your son?

A: I don't know. He did not do anything wrong. He was innocent. They killed an innocent man. They (the Turks) want to kill Kurds.

Q: Was your son armed?

A: No, apart from a lighter he did not have anything on him.

Q: Do you have any witnesses that the Turkish army killed your son?

A: Yes. We were four women who saw the Turkish army take away our men. You can also ask the Party (KDP) because they talked to the Turkish army officers.

Q: How did they kill your son?

A: They cut him to pieces. His ears were cut off, they took his tongue out of his mouth. I cannot describe it to you. They have not left anything. They have chained him and dragged him. His body was full of bullets, his genitals were cut.

Q: Have you submitted a petition anywhere in relation to the Turkish army?

A: Yes.

Q: Where?

A: In Sarsang, Dohuk, and I and the others have spoken to many foreign groups.

Q: Is there an investigation into the killings?

A: No, they [Dohok Governor] keep telling us that they will investigate. Each one takes statements from us and they say God will help you.

Q: Have you been given autopsy reports on your son and husband?

A: No, I haven't. I will try to get one for you.

Q: Do you have anything more to add to your statement?

A: I would not be able to tell you everything that happened because my heart is burning. I know my son and husband were innocent and did not have any problem with anybody. The Turks left me with my children and I do not know how I will live. Please help to find out the truth.

(b) Beebin Ahmad Omer

28. The applicant was the wife of Ahmad Fatah Hassan, a shepherd who was allegedly killed by members of the Turkish army. In her statement the applicant alleged the following:

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It was early in the morning, on 2 April, and I was at home when I heard the sound of gunshots in the distance. We had heard that the Turkish army was in the area and our shepherds were out with the sheep, so I was concerned. I went out to find out what was happening. Some other people were outside and a man was telling them that the Turkish army was near our village and that the shooting was coming from the direction of the cave. That is in the direction of Spna, not far from the village. The man said that it seemed to him that the Turkish troops were firing inside the cave.

We talked about what to do and we thought that we would go to find the shepherds. I and the other women went out to look for the men. We thought that we would not be harmed if it was only women who went to look.

When we saw the soldiers from a distance, our men were with them. The soldiers saw us and they began to fire at us to frighten us. We went away from them and watched what was happening. We saw our shepherds with the Turkish soldiers but we could not do anything. We saw some more soldiers down in the valley and we went over to them to ask them to let us go to the shepherds. We begged them, but they pointed guns at us so we went away from them.

We spent some time searching for the men and checked the cave, but there was no one there. We were still looking for the shepherds when we saw a Turkish army helicopter land nearby. We went to another group of Turkish soldiers and asked them to let us see the shepherds but they didn't let us. We searched for a long time but we could not find the shepherds. Then we went back to the village to tell the men of the village about what had happened. They went to the KDP (Kurdistan Democratic Party Officials) to get help and some men went to the Turkish officers in the area to have the men released. The men, headed by the local KDP chief, went to the Turkish officer in charge at Anshki to ask him to let the men go and to let the sheep be brought back but he said he did not know anything. We had seen our shepherds with the Turkish soldiers and so we were frightened for the safety of the shepherds.

The next day some people went out again to search for the men. They found the five bodies near the cave. My husband's body was among them. The bodies were brought to the main road so they could be taken to Azadi hospital in Dohuk. The village people kept looking for the other two missing shepherds. Two days later they found their bodies.

(c) Safia Shawan Ibrahim

29. The applicant was the wife of Abdula Teli Hussein, one of the shepherds allegedly killed by members of the Turkish army. She stated:

That morning, the 2nd of April 1995, I set out with my husband and the other shepherds and women to tend to the sheep. There were seven shepherds and four women including myself. We had not gone very far from the village