

Lead Counsel for Plaintiff, Serbian Orthodox Church v. William Jefferson Clinton, US Dist. Ct., N.D. Illinois, Eastern Div. (1999) (Code Case99A)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

SERBIAN ORTHODOX CHURCH,  
in the United States of America acting for and on behalf of itself and the entire Serbian Orthodox Church,  
a world-wide religious community  
Plaintiff.

-vs-

WILLIAM JEFFERSON CLINTON, President and Commander-in-Chief of the Armed Forces of the  
United States of America  
Defendant.

COMPLAINT  
FOR INJUNCTION AND/OR EXPEDITED DECLARATORY JUDGMENT

Plaintiff, Serbian Orthodox Church, in the United States of America acting for and on behalf of itself and the entire Serbian Orthodox Church, a world-wide religious community, for complaint against Defendant, William Jefferson Clinton, alleges and states as follows:

I. Nature of the Action

1. This action is brought to enjoin Defendant Clinton, from further ordering United States of America Armed Forces personnel to conduct military air operations, missile strikes, and bombardment over the Federal Republic of Yugoslavia. These military operations imperil the churches, sacred places, and sacred objects of the Plaintiff, Serbian Orthodox Church.
2. This action is additionally brought for expedited declaratory judgment against the Defendant Clinton, adjudicating that the current military air operations, missile strikes, and bombardment by the United States of America Armed Forces against the territory of the Federal Republic of Yugoslavia, which commenced on March 23, 1999, and continues at the time of the filing of the present action, are in violation of treaties which constitute the supreme law of the land, as well as the First Amendment to the Constitution of the United States of America.

II. Jurisdiction

3. This action arises under the following treaties and Constitutional provision of the United States of America:

1. The United Nations Charter of 1945, a treaty of the United States of America;
2. The Kellogg-Briand Peace Pact of 1928, a treaty of the United States of America;
3. The Hague Convention IV of 1907, a treaty of the United States of America; and
4. The First Amendment to the Constitution of the United States of America.

1. This Court has jurisdiction of this action under 28 U.S.C. Sect. 1331.

III. Parties

2. The Serbian Orthodox Church is a world-wide religious community of Christians who profess the Holy Orthodox faith. (See signatures of the Bishops of the Serbian Orthodox Church of North and South America attached hereto as Exhibit A.) The Serbian Orthodox Church is a hierarchical Church and, in the United States of America, the highest hierarchical body is the Episcopal Council headquartered in Lake County, Illinois. The Serbian Orthodox Church has faithful adherents living in large numbers both in the United States of America, a majority of which are citizens of the United States of America, and in the Federal Republic of Yugoslavia. The Serbian Orthodox Church owns substantial property both in the United States of America and in the Federal Republic of Yugoslavia, including that region known as Kosovo. The majority of the Plaintiff's sacred objects, icons, and relics are located in over 800 churches and shrines in the very small geographic area known as Kosovo.

3. The Defendant is the Commander-in-Chief of the Armed Force of the United States of America.

#### IV. General Factual Background

4. As a result of ongoing internal civil strife within the Federal Republic of Yugoslavia, the United Nations Security Council, on March 31, 1998, adopted Resolution 1160. The United States of America voted in favor of that Resolution in which the United Nations Security Council affirmed the commitment of all Member States of the United Nations to the sovereign and territorial integrity of the Federal Republic of Yugoslavia and called upon the Federal Republic of Yugoslavia and the leadership of the Kosovo Albanian community within the Federal Republic of Yugoslavia to enter into meaningful dialogue for a peaceful political settlement of the internal civil strife.

5. Because of the continued ongoing civil strife, the United Nations Security Council, on September 23, 1998, adopted Resolution 1199. The United States of America voted in favor of that Resolution in which the United Nations Security Council reaffirmed the sovereign and territorial integrity of the Federal Republic of Yugoslavia and once again called upon the Federal Republic of Yugoslavia and the leadership of the Kosovo Albanian community within the Federal Republic of Yugoslavia to enter into meaningful dialogue for a peaceful political settlement of the ongoing civil strife.

6. As a further result of ongoing internal civil strife within the Federal Republic of Yugoslavia, the United Nations Security Council, on October 24, 1998, adopted Resolution 1203. The United States of America voted in favor of that Resolution in which the United Nations Security Council once again reaffirmed the sovereign and territorial integrity of the Federal Republic of Yugoslavia and called upon the leadership of the Kosovo Albanian community within the Federal Republic of Yugoslavia to condemn and cease all of its terrorist activities.

7. None of the aforementioned Security Council Resolutions, nor any other Security Council Resolution, authorized the use of military force by any Member State, alone or in concert with other states, against the territory of the Federal Republic of Yugoslavia or against either the Serbian or Albanian communities within the Federal Republic of Yugoslavia.

8. In furtherance of Security Council Resolutions 1160, 1199, and 1203, the United States of America participated in a negotiating conference in Rambouillet, France, during February and March, 1999, between representatives of the Federal Republic of Yugoslavia and representatives of the Albanian community with the Federal Republic of Yugoslavia. When the representatives of the two sides appeared unable to reach a mutually satisfactory agreement, the Defendant, acting through his representatives, threatened military action against the Federal Republic of Yugoslavia if it did not sign an agreement principally prepared by representatives of the United States of America, which would have forced the Federal Republic of Yugoslavia to permit the stationing of ground troops of states, including the United States of America, within Kosovo to enforce a plan of autonomy for the Albanian community in Kosovo.

9. Despite the threat of military action outlined in paragraph 11, *supra*, the Federal Republic of Yugoslavia refused to sign a peace agreement, and hence no Kosovo peace agreement ever came into existence.

10. To date there has been no joint resolution of Congress authorizing or approving the Defendant's deployment of United States of America armed forces in military operations against the Federal Republic of Yugoslavia.

11. Commencing with military air operations and missile strikes on March 23, 1999, the United States of America Armed Forces have been engaged in missile and aerial bombardments resulting in severe material damage, loss of life and displacement of persons from their homes and communities, both Serbian and Albanian, within the Federal Republic of Yugoslavia. These bombardments have hit and partially destroyed churches, sacred property, and sacred objects belonging to the Plaintiff constituting an integral and irreplaceable part of the Plaintiff's religion and religious mission.

12. Prior to, during, and after the Rambouillet negotiating conference the Plaintiff, Serbian Orthodox Church, tried to assist in the peaceful resolution of the internal strife in the Kosovo region, but the Plaintiff was rebuffed by both the United States of America and the Federal Republic of Yugoslavia. Following the military bombardment over the Federal Republic of Yugoslavia which began on March 23, 1999, and continuing to the present day, the Plaintiff has continuously tried to assist in the peaceful resolution of said internal strife and continues to be rebuffed. At all times the Plaintiff remains ready, willing and able to assist in any way to resolve the internal strife in the Kosovo region.

## V. Illegality of the Defendant's Actions

### A. Under the Charter of the United Nations

13. The United States of America is party to the Charter of the United Nations, a treaty. 59 Stat. 1031. A treaty is part of the supreme law of the land. U.S. Const. Art. VI.

14. Under Article 2(4) of the U.N. Charter, all member states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. This provision is mandatory and self-executing because it does not require any state to undertake any action or enact any legislation, but rather simply prohibits the commission of certain defined acts.

15. The U.N. Charter provides for only two exceptions to Article 2(4). First, Article 51 provides that nothing in the Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations. Defendant Clinton has never claimed that the internal strife in the Federal Republic of Yugoslavia constitutes an armed attack against the United States of America. Furthermore, he has never claimed that his deployment of Armed Forces against the territory of the Federal Republic of Yugoslavia is in the self-defense of the United States of America.

16. The second exception in the U.N. Charter to Article 2(4) is military action expressly authorized by the Security Council under Articles 39-50 and Article 94. For example, the Persian Gulf War (A Operation Desert Storm) was explicitly authorized by the Security Council under Articles 39-42. However, as detailed in paragraphs 7-10 of this Complaint, the Security Council has neither authorized nor approved the use of military force against the Federal Republic of Yugoslavia.

17. Defendant Clinton's orders to deploy American service personnel in the current military campaign against the Federal Republic of Yugoslavia are in violation of Article 2(4) of the U.N. Charter which is part of the supreme law of the land.

### B. Under the Kellogg-Briand Peace Pact

18. The General Treaty for the Renunciation of War as an Instrument of National Policy of 1928, also known as the Kellogg-Briand Peace Pact, provides in Article I that the Parties to the treaty solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another. The United States of America is party to this treaty. 46 Stat. 234. The Kellogg-Briand Peace

Pact was held to be violated by the Nazi defendants at the Nuremberg trials. Defendant Clinton's actions in deploying American armed forces to engage in military action in the Federal Republic of Yugoslavia are in violation of Article I of the Kellogg-Briand Peace Pact which is part of the supreme law of the land.

#### C. Under the Hague Convention of 1907

19. The Hague Convention (No. IV) Respecting the Laws and Customs of War on Land, With Annex of Regulations, of 1907, is a treaty to which the United States of America is party. 36 Stat. 2277. Article 27 of the Regulations provides that [i]n sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion. The Plaintiff's churches in the Federal Republic of Yugoslavia are distinctively visible from the air as religious buildings. Yet, Defendant Clinton's actions in ordering United States of America service personnel to engage in missile strikes and above-the-clouds launching of bombs do not evidence an intent to comply with the restriction of Article 27. Indeed, errant missiles and non-pinpoint bombing have already struck churches belonging to the Plaintiff. The situation can only be aggravated when increased sorties and carpet-bombing tactics now ordered over Kosovo will most likely result in extensive damage to or destruction of Plaintiff's churches and monasteries which number in excess of 800 scattered throughout the relatively small region of Kosovo. Defendant Clinton's orders in this regard amount at least to willful negligence, and perhaps to deliberate disregard, of Article 27 of the Hague Convention, which is part of the supreme law of the land.

#### D. Under the First Amendment to the Constitution of the United States of America.

20. The First Amendment has long been interpreted as securing religions against government interference. The Plaintiff's sacred relics and icons, most of which are located in Serbian Orthodox churches in Kosovo and more generally in the Federal Republic of Yugoslavia, constitute an integral part of the Serbian Orthodox faith. (See a description of some of these relics and icons attached hereto as Exhibit B.) The religion itself will be irreversibly diminished by the destruction of any of these ancient relics and icons. The ability of the faithful of the Serbian Orthodox Church to engage in the free exercise of their religion will be impaired if an integral and holy part of that Church is itself destroyed by any action of an official of the United States of America acting under color of law. Defendant Clinton is acting under color of law in ordering missile strikes and aerial bombardment of Kosovo and more generally of the Federal Republic of Yugoslavia. In doing so, he is acting in wanton and reckless disregard of the Constitutional right of the Serbian Orthodox Church, and through them the Plaintiff itself, from engaging in the full and free exercise of their religion as guaranteed by the First Amendment to the Constitution of the United States of America.

#### VI. Injuries to the Plaintiff

21. The Serbian Orthodox Church possesses a substantial number of Churches, Monasteries, and Holy Relics throughout Serbia and Montenegro, including those in the Kosovo region where over 800 churches and monasteries exist. These Churches, Monasteries and Sacred Relics, particularly those in Kosovo, are ancient, revered and central to the life of the Holy Orthodox Church. They are known throughout the world. They have been and continue to be the objects of pilgrimages of people from all over the world of many faiths, including the Serbian Orthodox Church, to venerate these sacred objects and holy places and to pray for physical and spiritual healing.

22. These Churches, Monasteries and Sacred Relics are in imminent danger of destruction from the massive bombing which is currently taking place.

23. In fact, the twelfth-century monastery of Gracanica in Kosovo region has already suffered substantial

damage from bombardments resulting from Defendant Clinton's deployment of American air power. 24. Damage to such Churches and Monasteries, and the irreplaceable ancient and sacred relics and icons contained therein, would constitute an irreparable loss to the Plaintiff. Many of these sacred relics and objects are priceless. No monetary reward or other remedy available at law could conceivably compensate for the loss of an integral part of one's religion.

WHEREFORE, the Plaintiff requests that this Honorable Court order relief as follows:

A. An injunction against Defendant William Jefferson Clinton to cease and desist from further deployment of American service personnel in the current military campaign of aerial bombardment and missile strikes against the Federal Republic of Yugoslavia; and

B. Additionally or alternatively, an expedited declaratory judgment against Defendant William Jefferson Clinton, adjudicating him to be acting contrary to the First Amendment to the Constitution of the United States of America, and/or treaties which are part of the supreme law of the land, insofar as he continues to order the deployment of American service personnel to carry out a campaign of aerial bombardment and missile strikes against the Federal Republic of Yugoslavia.

Although the Plaintiff is asking first and foremost for an injunction, the Plaintiff is willing to accept an expedited declaratory judgment in lieu of an injunction on the ground of its confidence that Defendant William Jefferson Clinton will act immediately and consistently with a decision of this Court irrespective of whether the decision is in the form of an injunction or a declaratory judgment.

Respectfully submitted,

By:

Anthony D'Amato  
Attorney for the Plaintiff  
Anthony D'Amato  
Northwestern University School of Law  
357 East Chicago Avenue  
Chicago, Illinois 60611  
(312) 503-8474

By:

Robert J. Pavich  
Attorney for the Plaintiff  
Robert J. Pavich Monico Pavich & Spevack  
29 South LaSalle Street  
Suite 720  
Chicago, Illinois 60603  
(312) 782-8500

By:

Nick Katich  
Attorney for the Plaintiff  
Nick Katich  
3759 Kingsway Drive  
Crown Point, Indiana 46307

(219) 663-7140

EXHIBIT A

We the undersigned, being all of the Bishops of the Serbian Orthodox Church of North and South America, approve and ratify the filing of this complaint on behalf of the worldwide Serbian Orthodox Church.

Signature is forthcoming

+ Christopher, Metropolitan of the Midwest American Diocese and President of the Joint Episcopal Council

Signature is forthcoming

+ Longin, Bishop of Dalmatia and Administrator of the American-Canadian Diocese (New Gracanica Metropolitanate)

Signature is forthcoming

+ Mitrofan, Bishop of the Eastern American Diocese

Signature is forthcoming

+ Jovan, Bishop of the Western American Diocese