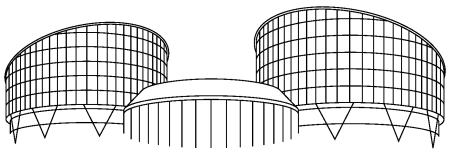

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 1 of the European Convention on Human Rights

Obligation to respect human rights – Concepts of “jurisdiction” and imputability

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COUNCIL OF EUROPE
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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law under Article 1 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, ECHR 2016).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89, no. 30078/06, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a *List of keywords*, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The *HUDOC database* of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the *HUDOC user manual*.

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

Article 1 of the Convention – Obligation to respect human rights

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

HUDOC keywords

High Contracting Party (1) – Responsibility of States (1) – Jurisdiction of States (1)

1. As provided by Article 1, the engagement undertaken by a Contracting State is confined to "securing" ("*reconnaître*" in the French text) the listed rights and freedoms to persons within its own "jurisdiction". "Jurisdiction" within the meaning of Article 1 is threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 103, and the case-law therein).

2. Historically, the text drawn up by the Committee on Legal and Administrative Affairs of the Consultative Assembly of the Council of Europe laid down, in what was to become Article 1 of the Convention, that "member States [should] undertake to secure to everyone residing in their territories the rights ...". The Committee of Intergovernmental Experts which examined the Consultative Assembly's draft decided to replace the words "residing in their territories" with "within their jurisdiction". The reasons for that amendment are described in the following extract from the *Collected Edition of the* Travaux Préparatoires *of the European Convention on Human Rights*:

> "The Assembly draft had extended the benefits of the Convention to 'all persons residing within the territories of the signatory States'. It seemed to the Committee that the term 'residing' might be considered too restrictive. It was felt that there were good grounds for extending the benefits of the Convention to all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word. The Committee therefore replaced the term 'residing' by the words 'within their jurisdiction' which are also contained in Article 2 of the Draft Covenant of the United Nations Commission." (Vol. III, p. 260)

3. The adoption of Article 1 of the Convention was also preceded by a comment made by the Belgian representative, who, on 25 August 1950 during the plenary sitting of the Consultative Assembly, said that:

> "... henceforth the right of protection by our States, by virtue of a formal clause of the Convention, may be exercised with full force, and without any differentiation or distinction, in favour of individuals of whatever nationality, who on the territory of any one of our States, may have had reason to complain that [their] rights have been violated."

4. The *travaux préparatoires* go on to note that the wording of Article 1, including "within their jurisdiction", did not give rise to any further discussion and the text as it was (and is now) was adopted by the Consultative Assembly on 25 August 1950 without further amendment (*Collected Edition*, vol. VI, p. 132) (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, §§ 19-20).

5. The concept of "jurisdiction" for the purposes of Article 1 of the Convention must be considered to reflect the term's meaning in public international law (*Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, § 344).

6. Establishing the existence of "jurisdiction" within the meaning of Article 1 of the Convention is not necessarily determined by the merits of the case, and it is not therefore necessary to be left to

be determined at the merits stage of the proceedings (*Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, § 265). More specifically, the questions whether the acts which form the basis of the applicant's complaints fall within the *jurisdiction* of the respondent State and whether that State is in fact *responsible* for those acts under the Convention are very different, the latter question falling to be determined by the Court rather at the merits phase (*Loizidou v. Turkey* (preliminary objections), 1995, §§ 61 and 64). A distinction must also be drawn between the issue of *jurisdiction*, within the meaning of Article 1 of the Convention, and that of the *imputability* of the alleged violation to the actions or omissions of the respondent State, the latter issue being examined from the angle of the application's compatibility *ratione personae* with the provisions of the Convention (*Loizidou v. Turkey* (merits), 1996, § 52). The Court usually considers the notions of imputability and responsibility as going together, the State only engaging its responsibility under the Convention if the alleged violation could be imputed to it. In some specific cases, however, the Court is careful to distinguish between the two notions and to examine them separately (*Assanidze v. Georgia* [GC], 2004, § 144).

7. Furthermore, the Court considered that it could raise the issue of jurisdiction or of the imputability of alleged violations to the respondent State of its own motion, even where the Government of that State failed to raise an objection as to admissibility (*Stephens v. Malta (no. 1)*, 2009, § 45; *Vasiliciuc v. the Republic of Moldova*, 2017, § 22); *Veronica Ciobanu v. the Republic of Moldova*, 2021, § 25).

8. The Court has established a number of clear principles in its Article 1 case-law. Thus Article 1 makes no distinction as to the type of rule or measure concerned, and does not exclude any part of the member States' "jurisdiction" from scrutiny under the Convention (*N.D. and N.T. v. Spain* [GC], 2020, § 102). However, in any case brought before it, the issue of the respondent State's "jurisdiction" under Article 1 must be examined to the "beyond reasonable doubt" standard of proof, it being understood that such proof, as noted above, may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, § 265). For the purposes of establishing jurisdiction under the Convention, the Court takes account of the particular factual context and relevant rules of international law (*Jaloud v. the Netherlands* [GC], 2014, § 141). It must concentrate on the issues raised in present case before it, without, however, losing sight of the general context (*Loizidou v. Turkey* (merits), 1996, § 53).

9. Under Article 1 of the Convention, there is no principled reason to distinguish between, on the one hand, someone who was in the jurisdiction of a Contracting State but voluntarily left that jurisdiction before the events at issue, and, on the other, someone who was never in the jurisdiction of that State. Likewise, a State's jurisdiction does not depend on the seriousness or intensity of the alleged breach, and such factors do not alter the Court's reasoning on this point (*Abdul Wahab Khan v. the United Kingdom* (dec.), 2014, § 26).

10. The acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 318; *Solomou and Others v. Turkey*, 2008, § 46).

11. It should also be remembered that, for the purposes of the Convention, the sole issue of relevance is the State's international responsibility, irrespective of the national authority to which the breach of the Convention in the domestic system is imputable. Even though it is not inconceivable that States will encounter difficulties in securing compliance with the rights guaranteed by the Convention in all parts of their territory, each State Party to the Convention nonetheless remains responsible for events occurring anywhere within its national territory. Further, the Convention does not merely oblige the higher authorities of the Contracting States themselves to respect the rights and freedoms it embodies; it also has the consequence that, in order to secure

the enjoyment of those rights and freedoms, those authorities must prevent or remedy any breach at subordinate levels. The higher authorities of the State are under a duty to require their subordinates to comply with the Convention and cannot shelter behind their inability to ensure that it is respected. The general duty imposed on the State by Article 1 of the Convention entails and requires the implementation of a national system capable of securing compliance with the Convention throughout the territory of the State for everyone. That is confirmed by the fact that, firstly, Article 1 does not exclude any part of the member States' "jurisdiction" from the scope of the Convention and, secondly, it is with respect to their "jurisdiction" as a whole that member States are called on to show compliance with the Convention. (*Assanidze v. Georgia* [GC], 2004, §§ 146-147). In short, it is only the responsibility of the Georgian State itself – not that of a domestic authority or organ – that is in issue before the Court. It is not the Court's role to deal with a multiplicity of national authorities or courts or to examine disputes between institutions or over internal politics (*ibid.*, § 149).

12. Generally speaking, a State may be held responsible even where its agents are acting *ultra vires* or contrary to instructions. Under the Convention, a State's authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will and cannot shelter behind their inability to ensure that it is respected (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 319).

I. The territoriality principle and the exceptions thereto

A. The territoriality principle and its scope

1. The territoriality principle in the traditional sense of the term

13. A State's jurisdiction within the meaning of Article 1 is *primarily territorial*. In accordance with Article 31 § 1 of the Vienna Convention on the Law of Treaties of 1969, the Court has interpreted the words "within their jurisdiction" by ascertaining the ordinary meaning to be given to the phrase in its context and in the light of the object and purpose of the Convention (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 99). Accordingly, Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, §§ 61, 67, 71, as well as *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 104, and the references therein.

14. The fact that the applicant currently lives in a Contracting State does not suffice to confer territorial jurisdiction on that State, and therefore responsible under Article 1 of the Convention. It is the subject-matter of the applicant's complaints alone that is relevant in this regard (*Chagos Islanders v. the United Kingdom* (dec.), 2012, § 63).

15. In the case of *Banković and Others v. Belgium and Others* (dec.) [GC], 2001, the applicants complained about the deaths of members of their families (and the injuries sustained by one of the applicants who had survived) resulting from the bombing of the Serb radio and television premises in Belgrade by NATO armed forces, even though the Federal Republic of Yugoslavia was not a Contracting State. The Court rejected the applicants' argument that any person suffering the negative effects of an act attributable to a Contracting State came *ipso facto*, wherever the act was committed or wherever its consequences were felt, "under the jurisdiction" of that State for the purposes of Article 1 of the Convention. It reiterated that the Convention was a multilateral treaty operating, subject to Article 56 of the Convention, in an essentially regional context and notably in the legal space (*espace juridique*) of the Contracting States, to which the Federal Republic of

Yugoslavia did not belong. The Convention was not therefore designed to be applied throughout the world, even in respect of the conduct of Contracting States. The Court was not persuaded, in the instant case, that there was any jurisdictional link between the respondent States and the applicants, who had not demonstrated that they and their deceased relatives were capable of coming within the jurisdiction of the respondent States on account of the extra-territorial act in question (see also *Marković and Others v. Italy* (dec.), 2003).

16. A State's jurisdiction is considered to be exercised normally throughout its territory (*Assanidze v. Georgia* [GC], 2004, § 139; *Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, § 345). The Convention precludes territorial exclusions other than in the instance referred to in Article 56 § 1 of the Convention (dependent territories) (*ibid.,* § 140; *N.D. and N.T. v. Spain* [GC], 2020, § 106); and *A.A. and Others v. North Macedonia*, 2022, § 61). In other words, the territorial scope of the Convention cannot be reduced, selectively and artificially, to only certain parts of the territory of a Contracting State (*ibid.*, 2022, § 63).

17. It is immaterial whether the respondent State is unitary or federal. Unlike the American Convention on Human Rights of 22 November 1969 (Article 28), the European Convention does not contain a "federal clause" limiting the obligations of the federal State for events occurring on the territory of the States forming part of the federation. Besides, even if an implied federal clause similar in content to that of Article 28 of the American Convention were found to exist in the European Convention (which is impossible in practice), it could not be construed as releasing the federal State from all responsibility, since it requires the latter to "immediately take suitable measures, in accordance with its constitution ..., to the end that the [states forming part of the federation] may adopt appropriate provisions for the fulfilment of [the] Convention". Indeed, for reasons of legal policy – the need to maintain equality between the States Parties and to ensure the effectiveness of the Convention – it could not be otherwise. But for the presumption, the applicability of the Convention could be selectively restricted to only parts of the territory of certain States Parties, thus rendering the notion of effective human rights protection underpinning the entire Convention meaningless while, at the same time, allowing discrimination between the States Parties, that is to say between those which accepted the application of the Convention over the whole of their territory and those which did not (*Assanidze v. Georgia*, 2004, §§ 141-142). Moreover, the authorities of a territorial entity of the State are public-law institutions which perform the functions assigned to them by the Constitution and the law (*ibid.*, § 148).

18. Moreover, the practical difficulties in the migration context cannot justify leaving an area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention which the States have undertaken to secure (*A.A. and Others v. North Macedonia*, 2022, § 63).

19. The European Commission of Human Rights ("the Commission") affirmed the principle of territoriality in the framework of two applications from a single person directed against the United Kingdom and Ireland, respectively. The applicant in those cases, a British national living in Northern Ireland, alleged a violation by both those States of the positive obligations stemming from Article 2 of the Convention on account of her husband's murder committed in the territory of the Republic of Ireland, and her brother's murder committed in Northern Ireland (and therefore in the United Kingdom). In the first application, against the United Kingdom, the applicant submitted that that State had also been responsible under the Convention for her husband's murder in the Republic of Ireland because the British authorities had not done all in their power to combat the overall phenomenon of IRA terrorism. The Commission recorded its disagreement. It noted that when he had died, the direct victim – the applicant's husband – had not been within the "jurisdiction" of the United Kingdom for the purposes of Article 1 of the Convention. The Commission also considered whether any action of the United Kingdom authorities could have played a part in the applicant's husband's murder in the Republic of Ireland, but found that the applicant herself had at no point alleged any such action on the part of the British authorities. Consequently, inasmuch as her

complaint concerned the United Kingdom and related to her husband's murder, it was incompatible *ratione loci* with the Convention. On the other hand, her brother's murder in the United Kingdom had bestowed "jurisdiction" on that State, such that the corresponding complaint was indeed compatible *ratione loci* (*W. v. the United Kingdom*, Commission decision of 28 February 1983). In the second case, against Ireland, the Commission reached diametrically opposed conclusions, to the effect that the applicant's husband had been within the jurisdiction of the respondent State, but not her brother. In particular, as regards the brother, the Commission added that the constitutional claim to the territories of Northern Ireland set out in Articles 2 and 3 of the Irish Constitution were not recognised by the international community as constituting the basis of jurisdiction over Northern Ireland (*W. v. Ireland*, Commission decision of 28 February 1983).

20. The existence of a fence located some distance from the border does not authorise a State to unilaterally exclude, alter or limit its territorial jurisdiction, which begins at the line forming the border (*N.D. and N.T. v. Spain* [GC], 2020, § 109). The case cited concerned the return to Morocco of two persons, one a Malian and the other an Ivoirian national, who had attempted to enter Spanish territory unlawfully by scaling three parallel fences surrounding the Spanish enclave of Melilla, which is located on the North African coast. The applicants had managed to reach only the top of the inner fence, from which they had finally climbed down with the help of the Spanish security forces, which had subsequently handed them over to the Moroccan authorities. The Court could not discern any "constraining *de facto* situation" or "objective facts" capable of limiting the effective exercise of the Spanish State's authority over its territory at the Melilla border and, consequently, of rebutting the "presumption of competence" in respect of the applicants. They therefore fell under Spain's "jurisdiction" within the meaning of Article 1 of the Convention. The Court pointed out that the practical difficulties of managing illegal immigration (in this case, the storming of the border fences by groups generally comprising several hundred non-nationals) did not alter its reasoning; on the contrary, the special nature of the context as regards migration cannot justify an area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention (*ibid.*, §§ 104-111).

21. Furthermore, the Court has recently specified that three refusals by Lithuanian border officials to accept asylum applications from a Chechen family at the border with Belarus constituted actions imputable to Lithuania, thereby falling within that country's jurisdiction under Article 1 of the Convention (*M.A. and Others v. Lithuania*, 2018, § 70).

22. As regards the territory of a State's diplomatic missions abroad, the administrative control exercised by the State over the premises of its embassies is not sufficient to bring every person who enters those premises within its jurisdiction (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 119). Thus the Court refused to recognise the territorial jurisdiction of Belgium in respect of four Syrian nationals who had submitted visa applications at the Belgian Embassy in Lebanon. Indeed, as they had not been in the territory of the State in question or at its border, they had not been in a situation of removal from its territory (*ibid.*, § 120).

23. Where the circumstances leading to the alleged violation occurred in a transfrontier or transnational context, pursuant to the principle that the jurisdictional competence of a State is primarily territorial, an application directed against several Contracting States is compatible *ratione loci* with the provisions of the Convention as regards the events which occurred on their respective territories (*Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, § 160).

2. Transfers of sovereignty over a given territory

24. Article 19 of the Convention does not empower the Cour to deliver a jugment on the lawfulness and validity of a transfer of territorial sovereignty under international law. However, the Court is empowered, in so far as and only to the extent necessary for the exercise of its competence under Article 19 of the Convention to "ensure the observance of the engagements undertaken by the High

Contracting Parties in the Convention and the Protocols thereto", to determine the nature of the jurisdiction exercised by a respondent State over a given territory. Indeed, the Court must inevitably determine the question of transfer of sovereignty where the Convention provision alleged to have been breached comprises a reference to the provisions of domestic law. Under its established case-law, the Court must examine the provisions of domestic law in considering the merits of a complaint, and therefore it must determine what the applicable "domestic" law is (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, §§ 341-342).

25. The Court examined the admissibility of an inter-State case against Russia in which the Ukrainian Government had raised a series of complaints concerning events which had occurred between 27 February 2014 and 26 August 2015; in the course of those events the Crimean region (including the city of Sebastopol) had been incorporated into the Russian Federation. In that connection the Court followed the approach adopted by the International Court of Justice, various international arbitral tribunals and the Swiss Federal Court, declaring that is was not called upon to decide in the abstract on the "legality" under international law of what had been presented as the "annexation of Crimea" or of the resultant legal status of that territory. Those matters had not been referred to the Court and did not therefore constitute the subject matter of the dispute before it (*Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, §§ 243-244 and 339). The Court examined the question of the respondent State's "jurisdiction", dealing separately with two different periods: the period preceding 18 March 2014, when the Russian Federation, the "Republic of Crimea" and the City of Sebastopol had signed a "unification treaty" incorporating Crimea into Russia, and the period since that date. As regards the former period, the Court followed its usual approach as defined in *Al-Skeini and Others v. the United Kingdom* [GC], 2011 (§§ 133-140), exceptionally recognising the extraterritorial exercise of jurisdiction based on the "effective control" by Russia of the area in question. Conversely, in connection with the latter period, the Court reiterated that it was not appropriate for it to assess whether and to what extent the "unification treaty" of 21 March 2014 had changed the sovereign territory of either State in a manner compatible with public international law. Nevertheless, it noted, first of all, that Ukraine and Russia had ratified the Convention in respect of their respective territories as delimited by their then internationally recognised borders; secondly, that neither of the States in question had notified any changes to their sovereign territories; and thirdly, that a number of States and international bodies had refused to recognise any kind of change involving Crimea, affecting the territorial integrity of Ukraine under international law. Under those circumstances, the Court stated that the applicant Government had failed to put forward any arguments capable of convincing it that there had been any change to the sovereign territory of either party to proceedings. For the purposes of the decision on the admissibility of the application, therefore, the Court proceeded on the basis of the assumption that the jurisdiction of the respondent State over Crimea was in the form or nature of "effective control over an area", as mentioned above (*Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, §§ 338-351). In short, the alleged victims of the administrative practice complained of by the applicant Government fell within the "jurisdiction" of the respondent State (*Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, § 352).

3. The relationship between Articles 1 and 56 of the Convention

26. Article 56 of the Convention, which is titled "Territorial application" (Article 63 before the entry into force of Protocol No. 11 in 1998), reads as follows:

> "1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
>
> 2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

> 3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
>
> 4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention."

27. The principles of extraterritorial application of the Convention as formulated by the Court in its constant case-law under Article 1 (see, in particular, *Al-Skeini and Others v. the United Kingdom* [GC], 2011), do not replace the system of declarations which the Contracting States decided, when drafting the Convention, to apply to territories overseas for whose international relations they were responsible. In other words, in the absence of a declaration made in conformity with Article 56, an applicant cannot legitimately rely on Article 1 to extend the application of the Convention to a territory located outside its legal space (*Quark Fishing Ltd v. the United Kingdom* (dec.), 2006; *Chagos Islanders v. the United Kingdom* (dec.), 2012, §§ 67-75).

28. In the case of *Quark Fishing Ltd v. the United Kingdom* (dec.), 2006, a fishing company, complained about the refusal by the authorities of the South Georgia and the South Sandwich Islands ("SGSSI") to grant it a licence to catch a particular species of fish. The applicant company applied to the British High Court and secured the quashing of the instruction in question; nevertheless, his claim for damages was dismissed by the court on the grounds that the application of Protocol No. 1 to the Convention (right to the peaceful enjoyment of property) had not been extended to the SGSSI. The Court found that according to the decisions of the British courts, the SGSSI were under the responsibility of the United Kingdom for the purposes of Article 56 of the Convention, but that the United Kingdom had not made a declaration extending the scope of Protocol No. 1 to that territory. The Court then rejected the applicant's plea relying on the "effective control" principle for the purposes of Article 1; that principle did not replace the system of declarations provided for in Article 56. The applicant company submitted that the declarations system, which was tailored to the colonial systems in the aftermath of the Second World War, was now outdated. While agreeing that the situation had changed considerably since the early days of the Convention, the Court pointed out that only the Contracting States could bring the declarations system to an end by means of the usual procedure of signature and ratification. The fact that the United Kingdom had extended the Convention itself to the territory gave no grounds for finding that Protocol No. 1 had also to apply or for the Court to require the United Kingdom somehow to justify its failure to extend that Protocol. There was no obligation under the Convention for any Contracting State to ratify any particular Protocol or to give reasons for their decisions in that regard concerning their national jurisdictions.

29. In the case of *Chagos Islanders v. the United Kingdom* (dec.), 2012, the applicants were 1,786 former inhabitants or descendants of former inhabitants of the Chagos Islands, now known as the British Indian Ocean Territory, or BIOT). The Chagos Islanders had been expelled *de facto* from their homeland, or been prohibited from returning there, by the British Government between 1967 and 1973, in order to allow for the construction of US defence facilities on one of the islands. No force was used, but the inhabitants of the islands found themselves destitute after having been uprooted and lost their homes and means of subsistence. The proceedings in the British courts ended in 1982 in a settlement involving renunciation by the islanders of their rights to return to their homeland. Adjudicating on the applicability *ratione loci* of the Convention, the Court noted that the United Kingdom had never made a notification under Article 56 extending the right of individual petition to the population of the BIOT. The Court also dismissed the applicants' contention that any possible basis of jurisdiction under Article 1 (see in particular *Al-Skeini and Others v. the United Kingdom* [GC], 2011) had to take precedence over Article 56 on the grounds that it should be set aside as an objectionable colonial relic and in order to prevent a vacuum in the protection offered by the Convention. Article 56 remained in force, its meaning was unambiguous, and the Court could not

revoke it at will in order to achieve any allegedly desirable outcome or to provide redress for wrongs committed. Nor did the fact that the final decision went to politicians or civil servants in the United Kingdom constitute sufficient grounds to bring within the jurisdiction of that State a region located outside the legal space of the Convention. Finally, inasmuch as the applicants had complained under Article 6 about the decisions of the British courts, the Court's assessment had to be confined to the procedural rights secured under that provision.

4. The jurisdictional link created by the commencement of civil or criminal proceedings

30. The mere fact that an individual has initiated a procedure in a State Party with which he has no connections is insufficient to establish that State's jurisdiction over him (*Abdul Wahab Khan v. the United Kingdom* (dec.), 2014, § 28). It is different if the individual has a connection with the country in question.

31. Thus, even if the events at the origin of a court case occurred outside the territory of the respondent State, where a person brings a civil action concerning those events before the courts of that State there is an undeniable "jurisdictional link" for the purposes of Article 1 of the Convention, to the extent that the rights secured under Article 6 § 1 are at stake – obviously without prejudice to the outcome of proceedings (*Marković and Others v. Italy* [GC], 2006, § 54; see also *Chagos Islanders v. the United Kingdom* (dec.), 2012, § 66). Indeed, if the domestic law recognises a right to bring an action and if the right claimed is one which prima facie possesses the characteristics required by Article 6 of the Convention, the Court sees no reason why such domestic proceedings should not be subjected to the same level of scrutiny as any other proceedings brought at the national level. Even though the extraterritorial nature of the events alleged to have been at the origin of an action may have an effect on the applicability of Article 6 and the final outcome of the proceedings, it cannot under any circumstances affect the jurisdiction *ratione loci* and *ratione personae* of the State concerned. If civil proceedings are brought in the domestic courts, the State is required by Article 1 of the Convention to secure in those proceedings respect for the rights protected by Article 6 (*Marković and Others v. Italy* [GC], 2006, §§ 53-54). In that case, the Court had examined the objection as to incompatibility *ratione loci* raised by the respondent Government, to the effect that the civil action brought by the applicants before the Italian courts had concerned events of an extraterritorial nature (an air strike by NATO forces in the Federal Republic of Yugoslavia).

32. Similarly, if the investigative or judicial authorities of a Contracting State institute their own criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, by virtue of their domestic law (e.g. under provisions on universal jurisdiction or on the basis of the active or passive personality principle), the institution of that investigation or those proceedings is sufficient to establish a jurisdictional link for the purposes of Article 1 between that State and the victim's relatives who later bring proceedings before the Court (*Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 2019, § 188). This approach is also in line with the nature of the procedural obligation to carry out an effective investigation under Article 2, which has evolved into a separate and autonomous obligation, albeit triggered by acts in relation to the substantive aspects of that provision. In this sense it can be considered to be a detachable obligation arising out of Article 2 and capable of binding the State even when the death occurred outside its jurisdiction (*ibid.*, § 189, and the references therein). Furthermore, it does not follow from the mere establishment of a jurisdictional link in relation to the procedural obligation under Article 2 that the substantive act falls within the jurisdiction of the Contracting State or that the said act is attributable to that State (*Hanan v. Germany* [GC], 2021, § 143).

33. On the other hand, where no investigation or proceedings have been instituted in a Contracting State, according to its domestic law, in respect of a death which has occurred outside its jurisdiction, the Court will have to determine whether a jurisdictional link can, in any event, be established for

the procedural obligation imposed by Article 2 to come into effect in respect of that State. Although the procedural obligation under Article 2 will in principle only be triggered for the Contracting State under whose jurisdiction the deceased was to be found at the time of death, "special features" in a given case will justify departure from this approach, according to the principles developed in *Rantsev v. Cyprus and Russia*, 2010, §§ 243-44. However, the Court does not consider that it has to define *in abstracto* which "special features" trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under Article 2, since these features will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other (*Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 2019, § 190); *Carter v. Russia*, 2021, § 132). Nevertheless, the Court recently asserted that the principles governing the establishment of a jurisdictional link between the victim(s) and the respondent State, which had already been formulated in relation to Article 2 of the Convention, are also applicable to Articles 3 and 5 of the Convention (*Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, § 157).

34. Thus in the case of *Rantsev v. Cyprus and Russia*, 2010, § 243-244) concerning the conduct of the Cypriot and Russian investigative authorities following the apparently violent death of a Russian national in Cyprus, the Court rejected the objection raised by Russia that the facts mentioned in the application fell outside its jurisdiction and therefore did not incur its responsibility. Since the alleged trafficking in human beings had begun in Russia, the Court was competent to examine the extent to which Russia could have taken steps within the limits of its own territorial sovereignty to protect the victim from trafficking, to investigate allegations of trafficking and to investigate the circumstances leading to her death, in particular by questioning witnesses living in Russia (§§ 206-208). Furthermore, assessing the merits of the complaint under the procedural head of Article 2 of the Convention, the Court concluded that Article 2 did not require member States' criminal laws to provide for universal jurisdiction in cases involving the death of one of their nationals outside their territory. Therefore, there was no free-standing obligation incumbent on the Russian authorities to investigate the victim's death in Cyprus, even if she was a Russian national – although Russia was indeed under an obligation to provide legal assistance as the State in whose territory the relevant evidence was to be found (§§ 243-245).

35. In the case of *Aliyeva and Aliyev v. Azerbaijan*, 2014, the Court had before it an application from the parents of an Azerbaijani national who had been killed in Ukraine under circumstances implicating two other Azerbaijani nationals. Pursuant to a legal mutual assistance agreement between Ukraine and Azerbaijan, the case had been transmitted to Azerbaijan, but in the absence of evidence the Azerbaijani authorities had discontinued the proceedings against the suspects. The Court raised *ex officio* the issue of its jurisdiction *ratione loci*, considering that insofar as Azerbaijan had accepted the obligation to conduct an investigation under the 1993 Minsk Convention to continue the criminal investigation commenced by the Ukrainian authorities, it was bound to conduct such an investigation in compliance with the procedural obligation under Article 2 and had undertaken to continue the criminal investigation commenced by the Ukrainian authorities, it was bound to conduct such an investigation in compliance with the procedural obligation under Article 2, regardless of where the death had occurred. Therefore, the jurisdiction of Azerbaijan within the meaning of Article 1 came into play only to the extent that the Azerbaijani authorities had decided to take of the proceedings previously opened by Ukraine, under the applicable international treaty and domestic law (§§ 55-57).

36. In the case of *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 2019, concerning the murders of several former residents of the "Turkish Republic of Northern Cyprus" ("TRNC") in the territory of the Republic of Cyprus, the TRNC authorities had initiated their own investigation into those murders, thus creating a "jurisdictional link" between the applicants and Turkey, which incurred the latter's responsibility *vis-à-vis* the acts and omissions of the "TRNC" authorities. Moreover, there were "special features" related to the situation in Cyprus. First of all, the international community regards Turkey as being in occupation of the northern part of Cyprus, and does not recognise the

"TRNC" as a State under international law. Northern Cyprus is under the effective control of Turkey for the purposes of the Convention. Secondly, the murder suspects had fled to the "TRNC" and as a consequence, the Republic of Cyprus had been prevented from pursuing its own criminal investigation in respect of those suspects and thus from fulfilling its Convention obligations. Having regard to those "special features" and to the initiation of the investigation by the "TRNC" authorities, the Court considered that Turkey's jurisdiction under Article 1 of the Convention was established (*ibid.,* §§ 191-197).

37. In the case of *Romeo Castaño v. Belgium*, 2019, the applicants complained of the Belgian authorities' refusal to execute a European Arrest Warrant issued by the Spanish authorities against a person suspected of having been a member of the ETA terrorist organisation, who had allegedly been involved in the murder of the applicants' father in Spain and who lived in Belgium, which had prevented the commencement of criminal proceedings against him Spain. Unlike the aforementioned cases of *Güzelyurtlu and Others* and *Rantsev*, the complaint lodged under the procedural limb of Article 2 had not been based on any alleged failure on the part of Belgium to honour a procedural obligation to investigate that murder itself. Nevertheless, the Court considered that the principles set out in the above-mentioned judgments as regards the determination of the existence of a "jurisdictional link" with the respondent should apply in the present case *mutatis mutandis*. Given that the person suspected of the murder had fled to Belgium and that the Spanish authorities had asked their opposite numbers in Belgium to arrest and surrender him in the framework of the European Arrest Warrant system, which was binding on both States, the Court concluded that those "special features" were sufficient to hold that there was a "jurisdictional link" between the applicants and Belgium (*ibid.* , §§ 38-42).

38. In the case of *Hanan v. Germany* [GC], 2021, the Court considered the existence of a "jurisdictional link" in the light of the principles set out in the *Güzelyurtlu and Others* judgment. In *Hanan*, which solely concerned the procedural limb of Article 2, a German colonel operating within the International Security Assistance Force (ISAF) under a mandate issued by the Security Council of the United Nations pursuant to Chapter VII of the UN Charter, had ordered an airstrike on two fuel tankers that had been hijacked by Taliban insurgents in Afghanistan, killing and injuring the insurgents and also a number of civilians. A German public prosecutor had initiated an investigation, which he had finally discontinued in the absence of criminal responsibility on the colonel's part. The Court held that the principle that the opening of an investigation into the deaths which had occurred outside that State's jurisdiction *ratione loci*, and not in the exercise of its extraterritorial jurisdiction, had in itself been sufficient to establish a jurisdictional link between that State and the victim, did not apply to the circumstances of the case. The deaths investigated by the German prosecution had occurred during an extraterritorial military operation in the framework of a UN Security Council mandate, outside Convention territory. Establishing a jurisdictional link based solely on the opening of an investigation could have a deterrent effect on the opening of national-level investigations into deaths occurring during extraterritorial military operations and were liable to lead to inconsistent application of the Convention to Contracting States participating in the same operation. Moreover, this would excessively broaden the scope of application of the Convention. However, the Court considered that the instant case comprised special features which could establish a jurisdictional link bringing the procedural obligation imposed by Article 2 into effect, even in the absence of an investigation or proceedings having been instituted in a Contracting State in respect of a death which has occurred outside its jurisdiction. First of all, Germany was obliged under customary international humanitarian law to investigate the airstrike at issue, as it concerned the individual criminal responsibility of members of the German armed forces for a potential war crime. Secondly, the Afghan authorities were, for legal reasons, prevented from instituting a criminal investigation themselves. By virtue of section I, subsection 3, of the ISAF Status of Forces Agreement, the troop-contributing States had indeed retained exclusive jurisdiction over the personnel they contributed to ISAF in respect of any criminal or disciplinary offences which their troops may commit on the territory of Afghanistan. Thirdly, the German prosecution authorities were also obliged, under

domestic law concerning the ratification of the Rome Statute of the International Criminal Court, to institute a criminal investigation relating to the responsibility of German nationals for war crimes or wrongful deaths inflicted abroad by members of their armed forces. All those factors constituted "special features" which in their combination had triggered the existence of a jurisdictional link for the purposes of Article 1 of the Convention in relation to the procedural obligation to investigate under Article 2 of the Convention (*ibid*., §§ 134-145).

39. The Court declared admissible a complaint under the procedural limb of Article 2 of the Convention concerning the murder by poisoning of a Russian defector, a former agent of the Russian security services and a political dissident. The crime had been committed in the United Kingdom by individuals acting as agents of the Russian State. The Court noted that the Russian authorities had initiated their own criminal investigation into the victim's death under domestic legal provisions giving them jurisdiction to investigate offences against Russian nationals wherever they had been committed. The pursuance of those proceedings had established a "jurisdictional link" between the victim and the Russian State. Furthermore, the persons suspected of the murder had been two Russian nationals who, since returning to Russia, had enjoyed constitutional protection from extradition, which protection had been relied upon by the Russian authorities to refuse the extradition of one of them to the United Kingdom. Consequently, the United Kingdom authorities had been prevented from pursuing the criminal prosecution of the suspects. The fact that the Government had retained exclusive jurisdiction over an individual who was accused of a serious human rights violation constituted a "special feature" of the case establishing the respondent State's jurisdiction under Article 1 . Any other finding would have undermined the fight against impunity for serious human-rights violations within the "legal space of the Convention" (*Carter v. Russia*, 2021, §§ 133-135).

40. Procedural obligations under Article 2 of the Convention may go beyond the conviction and sentencing of the guilty party. The Court thus established that "special features" obtained in the following factual context. While taking part in a training course in Hungary, an Azerbaijani officer decapitated an Armenian officer and threatened to kill another Armenian soldier. He was sentenced to life imprisonment in Hungary. The ethnic bias in respect of his crimes was fully investigated and highlighted by the Hungarian courts. Having served eight years of his sentence in Hungary, he. was transferred to Azerbaijan under the Council of Europe Convention on Transfer of Sentenced Persons ("the Transfer Convention") with a view to serving the remainder of his sentence in his home country. However, upon his return he was welcomed as a hero, immediately released, pardoned, promoted at a public ceremony and awarded arrears in salary for the period spent in prison as well as the use of a flat. Many comments approving his conduct and pardon were made by various high-ranking Azerbaijani officials. The Court reiterated that the enforcement of a sentence imposed in the context of the right to life had to be regarded as an integral part of the State's procedural obligation under Article 2. Regardless of where the crimes were committed, in so far as Azerbaijan had agreed to and assumed the obligation under the Transfer Convention to continue the enforcement of the prison sentence commenced by the Hungarian authorities, it was bound to do so, in compliance with its procedural obligations under Article 2. In sum, there were sufficient "special features" in the case to trigger the existence of Azerbaijan's jurisdictional link in relation to those procedural obligations (*Makuchyan and Minasyan v. Azerbaijan and Hungary*, 2020, §§ 50-51).

41. All the above-mentioned cases concerned criminal proceedings which were (or should have been) commenced at the initiative of the authorities of a Contracting State in the framework of its procedural obligations under Article 2 of the Convention. On the other hand, that reasoning does not apply to the very different case of *administrative* proceedings – for example proceedings aimed at obtaining a visa – brought by an individual without any pre-existing connection with the State in question, where the choice of that particular State was not imposed under any treaty obligation. In particulier, as regards immigration, the Court has held that to find otherwise would amount to enshrining a near-universal application of the Convention on the basis of the unilateral choices of

any individual, irrespective of where in the world they find themselves, and therefore to create an unlimited obligation on the Contracting States to allow entry to an individual who might be at risk of ill-treatment contrary to the Convention outside their jurisdiction. If the fact that a State Party rules on an immigration application is sufficient to bring the individual making the application under its jurisdiction, precisely such an obligation would be created. The individual in question could create a jurisdictional link by submitting an application and thus give rise, in certain scenarios, to an obligation under Article 3 which would not otherwise exist (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 123; *Abdul Wahab Khan v. the United Kingdom* (dec.), 2014, § 27). Such an extension of the Convention's scope of application would also have the effect of negating the well-established principle of public international law, recognised by the Court, according to which the States Parties, subject to their treaty obligations, including the Convention, have the right to control the entry, residence and expulsion of aliens (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 124, and the case-law cited therein).

B. Exceptions to the territoriality principle

42. To date, the Court has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the particular facts (*Catan and Others v. the Republic of Moldova and Russia*, § 105; *Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 132). Indeed, while international law does not exclude a State's extraterritorial exercise of its jurisdiction, the suggested bases of such jurisdiction (including nationality and flag) are, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 99).

43. Moreover, it should be emphasised that the mere fact that a case includes international elements is insufficient, alone, for that case to involve extraterritoriality for the purposes of Article 1 of the Convention. That is the situation with regard to cases under Article 8 concerning decisions taken with regard to individuals, irrespective of whether they were nationals, who were outside the territory of the respondent State but in which the question of that State's jurisdiction had not arisen, given that a jurisdictional link resulted from a pre-existing family or private life that that State had a duty to protect (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 109, and the case-law cited therein). Similarly, an instantaneous extraterritorial act was insufficient in this respect, as the provisions of Article 1 did not admit of a "cause and effect" notion of "jurisdiction" (*Medvedyev and Others v. France* [GC], 2010, § 64).

44. As an exception to the principle of territoriality, a Contracting State's jurisdiction under Article 1 may extend to acts of its authorities which produce effects outside its own territory (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 133, and the references therein). A State's jurisdiction outside its own border can primarily be established in one of the following two ways:

a. on the basis of the power (or control) actually exercised over the *person* of the applicant (personal concept of jurisdiction or *ratione personae*);
b. on the basis of control actually exercised over the foreign *territory* in question (spatial concept of jurisdiction or *ratione loci*).

45. The Court is empowered, in so far as and only to the extent necessary for the exercise of its competence – which Article 19 of the Convention defines as to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto" – to determine the nature of the jurisdiction exercised by a respondent State over a given territory (*Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, § 341).

46. However, before successively examining the aforementioned two concepts of jurisdiction, we shall assess separately the specific issue of the jurisdiction of a State conducting a military operation in a foreign territory during the active phase of hostilities.

1. The active phase of an international armed conflict

47. A distinction should be drawn between the military operations carried out during the active phase of hostilities (the combat phase) and the other events which occurred during the "occupation" phase after the active phase of hostilities had ceased (*Georgia v. Russia (II)* (merits), 2021, § 83).

a. The "active" State conducting a military operation in the territory of another State

48. The Court held that the actions of a Contracting State carrying out a military operation in the territory of another State in the framework of an international armed conflict could not give rise to any kind of jurisdiction *ratione loci* or *ratione personae* on the part of the former State inasmuch as the actions occurred during the active phase of hostilities. Indeed, the conditions applied in its case-law to determine whether there was an exercise of extraterritorial jurisdiction by a State are not met in such a situation. First of all, in the event of military operations – including, for example, armed attacks, bombing or shelling – carried out during an international armed conflict one cannot generally speak of "effective control" over an area. The very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos means that there is no control over an area. Moreover, the reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos also precludes any form of "authority and control by State agents" over individuals. In that connection, the Court contrasted isolated and specific acts involving an element of proximity (such as fire aimed by the armed forces/police of the States concerned, to which the concept of "State agent authority and control" could be applied; see below), with bombing and artillery shelling by a belligerent State seeking to put the enemy *hors de combat* and to establish control over a given area. Furthermore, the interpretation of Article 1 of the Convention as precluding the State's "jurisdiction" during the active phase of hostilities in the foreign territory is borne out by the practice of the High Contracting Parties in not derogating under Article 15 of the Convention in situations where they have engaged in an international armed conflict outside their own territory. This may be interpreted as the High Contracting Parties considering that in such situations, they do not exercise jurisdiction within the meaning of Article 1 (*Georgia v. Russia (II)* (merits), 2021, §§ 125-139).

49. Conversely, military occupation after the cessation of active hostilities can bestow jurisdiction on the "active" State on the basis of its effective control over the territory in question and/or specific individuals (*Georgia v. Russia (II)* (merits), 2021, §§ 161-175).

b. The "passive" State sustaining a foreign military operation in its territory

50. By the same logic, even where the "passive" State (sustaining a foreign military operation in its own territory) still formally holds "jurisdiction" over its whole territory in accordance with Article 1 of the Convention, normal exercise of such jurisdiction during the active phase of hostilities may be so impeded that the Court will declare the relevant complaints inadmissible. Clearly, the Court's case-law shows that the "passive" State is still required to adopt diplomatic, judicial, political or administrative measures to ensure respect for individual rights. On the other hand, it would be unrealistic to require the national authorities to do so during the active phase of hostilities, in a general situation of chaos and confusion. Given the ongoing massive armed conflict, such positive measures were, on the one hand, impossible to implement and, on the other, of no real value, as they could not have meaningfully contributed to the protection of the applicants' rights (*Shavlokhova and Others v. Georgia* (dec.), 2021, §§ 32-34; *Bekoyeva and Others v. Georgia* (dec.), 2021, §§ 37-39).

c. General observation

51. The Court recognised that such an interpretation of the notion of "jurisdiction" in Article 1 of the Convention might seem unsatisfactory to the alleged victims of acts and omissions by a respondent State during the active phase of hostilities in the context of an international armed conflict outside its territory but in the territory of another Contracting State, as well as to the State in whose territory the active hostilities have taken place. Nevertheless, having regard in particular to the large number of alleged victims and contested incidents, the magnitude of the evidence produced, the difficulty in establishing the relevant circumstances and the fact that such situations were predominantly regulated by legal norms other than those of the Convention (specifically, international humanitarian law or the law of armed conflict), the Court was not in a position to develop its case-law beyond the understanding of the notion of "jurisdiction" as established to date. If the Court was to be entrusted with the task of assessing acts of war and active hostilities in the context of an international armed conflict outside the territory of a respondent State, it was for the Contracting Parties to provide the necessary legal basis for such a task. That did not mean that States could act outside any legal framework, as they were obliged to comply with the very detailed rules of international humanitarian law in such a context (*Georgia v. Russia (II)* (merits), 2021, §§ 139-143).

2. Power exercised over the person of the applicant

a. General comment

52. The mere fact that decisions taken at national level had an impact on the situation of persons resident abroad is not such as to establish the jurisdiction of the State concerned over those persons outside its territory (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 112). In order to determine whether the Convention applies to an individual case, the Court must examine whether any exceptional circumstances actually exist relating to the nature of the connection between the applicant and the respondent State, such as to show whether the latter effectively exercised authority or control over him or her (*M.N. and Others v. Belgium* (dec.) [GC], 2020, §§ 112-113).

b. Acts of diplomatic or consular agents

53. A State's jurisdiction may arise from the activities of its diplomatic or consular agents abroad in accordance with the rules of international law where those agents exercise authority and control over other persons or their property (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 73). In some respects, the nationals of a Contracting State fall within the latter's jurisdiction even where they live or reside abroad; in particular, diplomatic and consular representatives exercise a series of functions the fulfilment of which may incur their country's responsibility under the Convention (*X. v. Germany*, Commission decision of 25 September 1965). Even if the applicant is physically in his own State, the acts and omissions of that State's diplomatic and consular agents which occur abroad but directly concern the said applicant place him under its jurisdiction (*X. v. the United Kingdom*, Commission decision of 15 December 1977).

54. The Commission therefore found that the applicants were within the jurisdiction of the respondent State in the following cases:

- a series of acts allegedly committed by German consular agents in Morocco against the applicant (a German national who did not consider himself as such because he was a member of the *Sudetendeutsch* community) and his wife, damaging their reputation and finally, according to the applicant, triggering his expulsion from Moroccan territory (*X. v. Germany*, Commission decision of 25 September 1965);
- the alleged inaction of the British consul in Amman (Jordan) to whom the applicant, a British national, had asked for assistance in restoring custody of her child, who had been

taken to Jordan by the father (*X. v. the United Kingdom*, Commission decision of 15 December 1977);

- the fact that the Danish Ambassador to the German Democratic Republic (GDR) had called the police of that State to remove a group of Germans who had taken refuge in the Danish Embassy (*M. v. Denmark*, Commission decision of 14 October 1992).

55. Conversely, the Court left open the question whether a binational (or a national of several different States) detained in one of the States whose nationality he or she held fell under the jurisdiction of the other State where the latter refused to afford him or her diplomatic protection or consular assistance (indeed, pursuant to a provision of customary international law relied on by the national authorities, a State cannot afford diplomatic protection to one of its nationals in respect of a State which he or she is also a national). Thus the Court rejected as manifestly ill-founded a complaint submitted by a Belgian-Moroccan binational concerning a refusal by the Belgian authorities to grant him consular assistance during his detention in Morocco. Even supposing that a positive obligation to act could have been deduced from the provisions of the Convention, the Court noted that the Belgian authorities had by no means remained passive or indifferent. The failure of their approaches to the Moroccan authorities had been the result not of their own inertia but of the categorical rejection of their requests by the Moroccan authorities, who at the time had had exclusive control over the applicant (*Aarrass v. Belgium* (dec.), 2021, §§ 37-41).

56. The Court found that Belgium had no jurisdiction over four Syrian nationals who had unsuccessfully applied for visas at the Belgian Embassy in Lebanon, relying on the risk of ill-treatment in their country of origin. First of all, the applicants were not Belgian nationals seeking to benefit from the protection of their embassy. Secondly, at no time did the diplomatic agents exercise *de facto* control over the applicants. The latter freely chose to present themselves at the Belgian embassy in Beirut, and to submit their visa applications there – as indeed they could have chosen to approach any other embassy; they were then free to leave the premises of the Belgian embassy without any hindrance (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 118). In this connection, it is irrelevant that the diplomatic agents had, as in the present case, merely a "letter box" role, or to ascertain who was responsible for taking the decisions, whether the Belgian authorities in the national territory or the diplomatic agents posted abroad (*ibid*., § 114).

c. Acts committed on board a ship or aircraft

57. In addition to acts performed by diplomatic and consular agents, other recognised instances of the extraterritorial exercise of jurisdiction by a State include cases involving the activities of its diplomatic or consular agents abroad and on board aircraft and ships registered in, or flying the flag of, that State. In these specific situations, customary international law and treaty provisions have clearly recognised and defined the extraterritorial exercise of jurisdiction by the relevant State (*Cyprus v. Turkey*, Commission decision of 26 May 1975; *Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 73; *Medvedyev and Others v. France* [GC], 2010, § 65); *Bakanova v. Lithuania*, 2016, § 63; *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 75).

d. Exercise of another State's sovereign authority with its agreement

58. The Court has recognised the exercise of extra-territorial jurisdiction by a Contracting State which, through the consent, invitation or acquiescence of the local Government, exercises all or some of the public powers normally to be exercised by that Government (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 71). Consequently, where, in accordance with custom, treaty or other agreement, authorities of the Contracting State carry out executive or judicial functions on the territory of another State, the Contracting State may be responsible for breaches of the Convention thereby incurred, as long as the acts in question are attributable to it rather than to the territorial State (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 135).

59. As regards extradition, when a State issues a European arrest warrant or and international arrest warrant issued by Interpol for the purposes of enforcing the detention of a person located in another State and the latter executes the warrant pursuant to its international obligations, the requesting State is responsible under the Convention for such detention, even if it was executed by the other State (*Vasiliciuc v. the Republic of Moldova*, 2017, §§ 23-24; *Stephens v. Malta (no. 1)*, 2009, §§ 51-54). Where the arrest warrant comprises a technical irregularity which the authorities of the requested State could not have detected, the requesting State should be ascribed responsibility under the Convention for the unlawful arrest warrant issued by its authorities pursuant to its domestic law and executed by the other State in compliance with its international obligations (*ibid.*, § 52).

60. The Commission dealt with a situation of that type in the case of *X. and Y. v. Switzerland* (Commission decision of 14 July 1977). In that case a German national complained about a prohibition on entry imposed on him by the Swiss Federal authorities, with effect both in Swiss territory and in Liechtenstein (which, at the time, had not yet ratified the Convention and therefore lay outside the scope of the latter). The decisive point for the Commission was that under an agreement between Switzerland and Liechtenstein, the latter was debarred from excluding the effects of an entry ban imposed by the Swiss authorities, whereby only the latter authorities were entitled to exclude Liechtenstein from the territorial scope of such a measure. In those conditions, Switzerland should be deemed responsible not only for the legal procedure and consequences of the prohibition on entry into its own territory, but also for the effects produced by that prohibition in Liechtenstein. Indeed, in conformity with the specific relationship between those two countries, in acting on behalf of Liechtenstein the Swiss authorities were actually acting in accordance with their national jurisdiction. According to the agreement in question, they were acting exclusively in pursuance of Swiss law, and it was merely the effect of their actions which extended to Liechtenstein territory. In other words, the prohibition had been imposed under Swiss jurisdiction, which had been extended to Liechtenstein. The Commission found that the measures implemented by the Swiss authorities which took effect in Liechtenstein placed all persons to whom they were applicable – including the applicants – under Swiss jurisdiction for the purposes of Article 1 of the Convention.

61. The Court addressed a fairly similar issue in *Drozd and Janousek v. France and Spain*, 1992, concerning the unique relationship between the Principality of Andorra and France and Spain, especially before the 1993 reform of the Constitution (at the material time Andorra had not yet signed or ratified the Convention). The applicants had been convicted of armed robbery by the competent Andorran court (*Tribunal des Corts*), which is made up of three members: a judge (French or Spanish, appointed in turn by each of the Co-Princes of Andorra, that is to say the President of the French Republic and the Bishop of Urgell), an episcopal *veguer* (appointed by the Bishop of Urgell), and a French judge delegated by the French *veguer* (in turn appointed by the French Co-Prince). After the conviction, pursuant to Andorran law, the applicants had the option of serving their sentence in France or in Spain; they opted for France. Before the Court they complained, in particular, that they had not benefited from a fair trial; they alleged that France and Spain were responsible, at the international level, for the conduct of the Andorran authorities. The Court disagreed. It noted that while judges from France or Spain sat in the Andorran courts, they did not do so in their capacity as French or Spanish judges. Those courts discharged their duties autonomously, and their judgments and decisions were not subject to supervision by the French or Spanish authorities. Moreover, there was nothing to suggest that the respondent States had attempted to interfere with the applicants' trial in Andorra. Consequently, insofar as they complained about the proceedings before the Andorran court, the applicants were under neither French nor Spanish jurisdiction (§ 96).

62. By the same logic, the Court found that there had been no jurisdictional link in the case of *Brandão Freitas Lobato v. Portugal* (dec.), 2021, in which the applicant, a former Minister of Justice in East Timor, had been convicted in the East Timor courts by Portuguese judges seconded under a

judicial cooperation programme. The Court noted that the Portuguese judges had been serving on behalf of East Timor rather than Portugal, and that the Portuguese authorities had not been empowered to uphold or invalidate the impugned decisions; they had therefore had no discretionary powers *vis-à-vis* the criminal charges against the applicant. Neither the fact that those judges had retained certain professional rights in Portugal and had still been subject to the disciplinary power of the Portuguese Supreme Council of the Judiciary (CSM) (including in respect of offences committed abroad), nor even the fact that the Portuguese CSM had actually launched an inquiry and commenced two sets of disciplinary proceedings concerning the judges' conduct in East Timor, had been sufficient to establish any jurisdictional link in the framework of the impugned criminal proceedings. Conversely, the applicant had herself come under Portuguese jurisdiction inasmuch as she considered that her procedural rights had been breached in the framework of the proceedings commenced by the CSM following her complaint.

63. Another example of a Court finding that the respondent State lacks "jurisdiction" was in the case of *Gentilhomme, Schaff-Benhadji and Zerouki v. France*, 2002. The applicants were three French women who were married to Algerian men and lived in Algeria. Pursuant to an agreement concluded by France and Algeria in 1962, French children – including those with dual Franco-Algerian nationality under French law – could attend French public schools in Algeria managed by the French Academic and Cultural Office for Algeria ("OUCFA"). In 1988, however, the Algerian Government sent the French Embassy in Algiers a *note verbale* informing it that Algerian children could no longer be enrolled or re-enrolled in French schools; that included the applicants' children, since dual nationality was not recognised under Algerian law. The applicants lodged applications with the Court against France, alleging, *inter alia*, a breach of Article 2 of Protocol No. 1 and Articles 8 and 14 of the Convention. The Court noted that the impugned situation had stemmed directly from a unilateral decision by Algeria. Whether or not that decision had been in conformity with public international law, it basically amounted to a refusal on the part of Algeria to comply with the 1962 agreement. The French authorities, whose exercise of "jurisdiction" in Algerian territory in the present case had been based solely on that agreement, could only note the consequences of the Algerian decision for the education of children in the same situation as those of the applicants. In short, the facts complained of had been caused by a decision imputable to Algeria, which had thus taken a discretionary decision within its own territory, outside the scope of any French scrutiny. In other words, in the specific circumstances of the case, those facts could not be imputed to France (§ 20).

e. Use of force by a State's agents operating outside its territory

64. In some cases, the use of force by a State's agents operating outside its territory – whether lawfully or unlawfully – may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 136). A typical example of such a case is where an individual has been handed over to a State's agents outside its territory, even if they are only presumed agents (*Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, § 161). Similarly, the control exercised over an individual on account of an incursion or a targeted operation by the armed forces or the police of a State operating beyond its own borders might be sufficient to bring the affected persons under the authority and/or effective control of that State, particularly as such targeted violations of the human rights of an individual by one Contracting State in the territory of another Contracting State undermine the effectiveness of the Convention both as a guardian of human rights and as a guarantor of peace, stability and the rule of law in Europe (*Carter v. Russia*, 2021, §§ 127-128). In *Carter*, that principle was applied to a premeditated, targeted extrajudicial killing by agents of one State acting in the territory of another State outside the context of a military operation (*Carter v. Russia*, 2021, § 130). In situations of that kind, the Court has emphasised that Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory (*Issa and Others v. Turkey*, 2004, § 71).

65. The Court thus acknowledged that the applicants were under the "jurisdiction" of the relevant respondent States in the following situations:

- the applicant, the leader of the PKK (the Kurdistan Workers' Party), who had been arrested by Turkish security agents in the international zone of Nairobi airport (Kenya) and flown back to Turkey. The Court noted – and the Turkish Government did not dispute – that, directly after being handed over to the Turkish officials by the Kenyan officials, the applicant was effectively under Turkish authority and therefore within the "jurisdiction" of that State, even though in this instance Turkey exercised its authority outside its territory. It is true that the applicant was physically forced to return to Turkey by Turkish officials and was under their authority and control following his arrest and return to Turkey (*Öcalan v. Turkey* [GC], 2005, § 91);
- the applicants, two Iraqis who had been charged with involvement in the murder of two British soldiers shortly after the invasion of Iraq in 2003, been held in a British detention facility near Baghdad, and had complained that their imminent handover to the Iraqi authorities would expose them to a real risk of execution by hanging. The Court held that inasmuch as the control exercised by the United Kingdom over its military detention facilities in Iraq and the individuals held there had been absolute and exclusive *de facto and de jure*, the applicants should be deemed to have been within the respondent State's jurisdiction (*Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), 2009, §§ 86-89);
- the applicants, crew members of a cargo ship registered in Cambodia and intercepted off the Cape Verde islands by the French navy under suspicion of transporting large quantities of drugs, were confined to their quarters under military guard until the ship's arrival in Brest. The Court found that as France had exercised full and exclusive control over the ship and its crew, at least *de facto*, from the time of its interception, in a continuous and uninterrupted manner until they were tried in France, the applicants had been effectively within France's jurisdiction for the purposes of Article 1 of the Convention (*Medvedyev and Others v. France* [GC], 2010, § 67).
- the applicants, a group of Somali and Eritrean nationals, who had been attempting to reach the Italian coast on board three vessels, were intercepted at sea by Italian Revenue Police and Coastguard ships, transferred on to Italian military ships and taken back to Libya, from whence they had departed. Reiterating the principle of international law stating that a vessel sailing on the high seas is subject to the exclusive jurisdiction of the State of the flag it is flying, the Court rejected the designation "rescue on the high seas" used by the Government to describe the events, and attached no importance to the allegedly low level of control exercised over the applicants by the agents of the Italian State. Indeed, the whole series of events had occurred on board Italian military ships, with crews made up exclusively of national servicemen. From the time of their arrival on board those ships until their handover to the Libyan authorities the applicants had been under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities (*Hirsi Jamaa and Others v. Italy* [GC], 2012, §§ 76-82).

66. The Court also determined Turkey's responsibility for the actions of the "Turkish Republic of Northern Cyprus" ("TRNC") in three cases concerning a single series of events linked to a Greek Cypriot demonstration against the Turkish occupation of the northern part of Cyprus. One of the demonstrators had been beaten to death in the UN buffer zone. Three days later, after his funeral, another man entered the buffer zone near the place where the first man had died, climbed up a flagpole as a sign of protest and was shot down. Turkish, or Turkish-Cypriot, soldiers opened fire on the crowd gathered in the buffer zone, injuring, in particular, a woman who had remained outside the zone, in undisputed Cypriot territory. The Court therefore had to establish whether all three victims had come under the authority and/or effective control – and therefore the jurisdiction – of Turkey in relation to the actions of the Turkish and "TRNC" soldiers and agents. To that end, the

Court relied on the statements of the police officers operating under the UN Forces in Cyprus, the reports drawn up by the latter and by the UN Secretary General, as well as the video recordings and photographs submitted by the applicants. The Court noted that the victim in the first case had died as a result of the aggressive attitude of the Turkish Cypriot police officers and soldiers towards the civilian demonstrators, and that despite the presence of the Turkish armed forces and the Turkish Cypriot police in the buffer zone, no action had been taken to prevent or put an end to the attacks or to help the victim (*Isaak v. Turkey* (dec.), 2006). As regards that man who had been the direct victim in the second case, the Court noted that he had entered the buffer zone tampon, that the flagpole which he had scaled had been in TRNC territory and that the bullets which had killed him had been shot by the TRNC forces (*Solomou and Others v. Turkey*, 2008, §§ 48-50). Lastly, although the applicant in the third case had sustained her injuries in a territory covered by the Convention, albeit one over which Turkey had not exercised any control, the injuries had been caused by gunfire from the TRNC forces (*Andreou v. Turkey* (dec.), 2008). Accordingly, the impugned facts had occurred under the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention, and had engaged that State's responsibility under the Convention.

67. In a decision where the issue of the jurisdiction of the respondent State had not been questioned, the Court held that there was no need to determine the exact location of the impugned events, given that the Government had already admitted that the fire discharged from the helicopters had caused the killing of the applicants' relatives, who had been suspected of being terrorists (*Pad and Others v. Turkey* (dec.), 2007, § 54).

68. The Court declared admissible an application concerning the targeted killing of a defector, a Russian former security service agent and dissident, carried out in the United Kingdom by individuals acting as agents of the Russian State. The public investigation established beyond any reasonable doubt that the victim had been poisoned with polonium 210, a rare radioactive isotope, and that that he had been administered that poison by two Russian nationals who had arrived in the United Kingdom on the instructions of the Federal Security Service of the Russian Fédération (those persons had subsequently been charged with murder by the United Kingdom police). The Court attempted to determine whether the murder had amounted to the exercise of physical power and control over his life in a situation of proximate targeting. The evidence of premeditation strongly indicated that the victim's death had been the result of a planned and complex operation; he had not been an accidental victim of the operation and he could not have ingested polonium 210 by accident. Accordingly, the Court found that the victim had been under the physical control of the two Russian agents, who had had power over his life, thus establishing a sufficient jurisdictional link for the purposes of Article 1 of the Convention (*Carter v. Russia*, 2021, §§ 158-161 and § 170).

69. Whenever the State, through its agents, exercises control and authority, and thus jurisdiction, over an individual, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual. In this sense, therefore, the Convention rights can be "divided and tailored" (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 137); *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 74); *Carter v. Russia*, 2021, § 126).

f. Other situations

70. There can be other situations where the nature of the link between the applicant and the respondent State are such as to permit a finding that that State had indeed exercised its authority or control over the applicant. Thus the Court found that the drowning of an underage Moldovan national during his stay in a summer camp in Romania had fallen under the jurisdiction of Moldova, since his stay on the Romanian coast had been organised by the Moldovan Ministry of Youth and Sport and that Ministry had appointed and mandated three of its officials as group leaders responsible for the young people. Furthermore, it did not transpire from the case file that any

Romanian officials had been involved in looking after the young Moldovans, including the victim (*Veronica Ciobanu v. the Republic of Moldova*, 2021, § 26).

3. Power exercised in a specific territory

71. As regards the "effective control" principle of jurisdiction over a specific territory, it should be noted from the outset that that principle does not replace the system of declarations under Article 56 of the Convention (formerly Article 63) which the States decided, when drafting the Convention, to apply to territories overseas for whose international relations they were responsible. Article 56 § 1 provides a mechanism whereby any State may decide to extend the application of the Convention, "with due regard ... to local requirements", to all or any of the territories for whose international relations it is responsible. The existence of this mechanism, which was included in the Convention for historical reasons, cannot be interpreted in present conditions as limiting the scope of the term "jurisdiction" in Article 1. The situations covered by the "effective control" principle are clearly separate and distinct from circumstances where a Contracting State has not, through a declaration under Article 56, extended the Convention or any of its Protocols to an overseas territory for whose international relations it is responsible (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 140; *Cyprus v. Turkey*, Commission decision of 26 May 1975).

72. The Convention is a constitutional instrument of European public order. It does not govern the actions of States not Parties to it, nor does it purport to be a means of requiring the Contracting States to impose Convention standards on other States (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 141). Clearly, therefore, in the two cases mentioned above, the Court's jurisdiction *ratione personae* can only extend to one State Party to the Convention. Indeed, where the territory of one Convention State is occupied by the armed forces of another, the occupying State should in principle be held accountable under the Convention for breaches of human rights within the occupied territory, because to hold otherwise would be to deprive the population of that territory of the rights and freedoms hitherto enjoyed and would result in a "vacuum" of protection within the "legal space of the Convention". However, the importance of establishing the occupying State's jurisdiction in such cases does not imply, *a contrario*, that jurisdiction under Article 1 of the Convention can never exist outside the territory covered by the Council of Europe member States. The Court has not in its case-law applied any such restriction (*ibid.*, § 142, and the references therein).

73. All the cases which the Court has hitherto considered from this angle concerned the control of the territory of a Contracting State by another Contracting State in the context of an armed conflict. In such situations, the issue of "jurisdiction" arises where a State loses effective control of all or part of its internationally recognised territory. The issue of a State's jurisdiction and responsibility may arise in two different manners in such cases. Where a State attacks the territorial and political integrity of another State, the complaints brought before the Court may be directed against:

1. the "active" Contracting Party, which is exercising its authority outside its own territory; this may take three different forms:
    a. complete or partial military occupation of another State;
    b. support for an insurrection or a civil war in another State;
    c. installation (or assistance with installation), on the territory of another State, of a separatist regime in the form of an entity which is not recognised as a sovereign State by the international community;
2. the "passive" Contracting Party, which is undergoing any of the above actions.

74. As shall be seen below, in each of the two cases the responsibility of the respondent State follows a different logic.

a. Jurisdiction of the "active" State on the grounds of its military action outside its territory

75. As regards the "active" State, the Court must first of all establish whether the alleged facts actually fall within its "jurisdiction" for the purposes of Article 1 of the Convention.

76. One exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 106, and the references therein).

77. Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (*Cyprus v. Turkey* [GC], 2001, §§ 76-77; *Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 138; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 106). Furthermore, where a Contracting State exercises overall control over an area outside its national territory, its responsibility is not confined to the acts of its soldiers or officials in that area but also extends to acts of the local administration which survives there by virtue of its military and other support (*Cyprus v. Turkey* [GC], 2001, § 77; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 316).

78. The question whether a Contracting State is genuinely exercising effective control over a territory outside its borders is one of fact. In seeking to answer that question the Court primarily has regard to the following two criteria:

- the number of soldiers deployed by the State in the territory in question; this is the criterion to which the Court had hitherto attached the greatest importance (*Loizidou v. Turkey* (merits), 1996, §§ 16 and 56; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 387);
- the extent to which the State's military, economic and political support for the local subordinate administration provides it with influence and control over the region (*ibid*., §§ 388-394; *Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 139).

79. Where the Court establishes that the facts of the case are within the respondent State's "jurisdiction", the latter has two main obligations:

- a negative obligation to refrain from actions incompatible with the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 320-321);
- a positive obligation to guarantee respect for the rights and freedoms secured under the Convention – at least as set out in the Court's general case-law (*ibid*., § 322).

80. The cases considered by the Court in the light of the above-mentioned principles may be broken down into two sub-categories:

a. cases concerning military "occupation" in the traditional sense as defined in Article 42 of the Hague Convention respecting the Laws and Customs of War on Land, which reads as follows: "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised";

b. cases concerning the creation, within the territory of a Contracting State, of an entity which is not recognised by the international community as a sovereign State, with the military, economic and political support of another Contracting State.

i. "Traditional" military occupation

81. The question of the occupying power's responsibility in the framework of "traditional" military occupation arose in a number of cases concerning *Iraq*. On 20 March 2003 the armed forces of the United States, the United Kingdom and their allies entered Iraq with a view to overthrowing the Ba'athist regime in power at the time. On 1 May 2003 the allies declared that the primary combat operations were completed, and the United States and the United Kingdom became the occupying powers. They set up the Coalition Provisional Authority to "exercise powers of government temporarily", including restoring security in Iraq. The security role taken on by the occupying powers was recognised in Resolution 1483 of the United Nations Security Council, adopted on 22 May 2003, which called on the Authority "to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability ...". The occupation ended on 28 June 2004 with the dissolution of the Coalition Provisional Authority and the transfer of authority to the interim Iraqi government. During the period of occupation, the United Kingdom had been in command of the Multinational Division (South-East) (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, §§ 9-23).

82. The case of *Al-Skeini and Others v. the United Kingdom* [GC], 2011, concerned the deaths of six of the applicants' relatives in Basra in 2003, when the United Kingdom had held occupying power status there. Three of them had been killed or fatally wounded by gunfire from British soldiers; another victim had been fatally injured during an exchange of fire between a British patrol and unidentified gunmen; another had been shot by British soldiers and then forced to jump into a river, where he had drowned; and 93 wounds had been found on the body of the last victim, who had died in a British military base. The Court noted that following the removal from power of the Ba'ath regime and until the accession of the interim Iraqi government, the United Kingdom (together with the United States of America) had assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In particular, the United Kingdom had assumed power and responsibility for maintaining security in the south-west of the country. In these exceptional circumstances, there was a jurisdictional link, for the purposes of Article 1 of the Convention, between the United Kingdom and the persons killed during security operations conducted by British troops between May 2003 and June 2004. In the light of that conclusion, the Court considered it unnecessary to assess whether the United Kingdom's jurisdiction was also established because that State had exercised effective military control over South-East Iraq during that period (§§ 143-150). That having been said, as the Court subsequently pointed out, the statement of facts in *Al-Skeini and Others* had included material which tended to demonstrate that the United Kingdom was far from being in effective control of the south-eastern area which it occupied, and this had also been the finding of the Court of Appeal, which had heard evidence on this question in the domestic proceedings (*Hassan v. the United Kingdom* [GC], 2014, § 75, referring to *Al-Skeini and Others v. the United Kingdom* [GC], 2011, §§ 20-23 and 80).

83. The Court delivered its judgment in the case of *Al-Jedda v. the United Kingdom* [GC], 2011, on the same day as the *Al-Skeini and Others* judgment. That case concerned the internment of an Iraqi civilian for over three years (2004-2007) in a detention centre run by the British forces in Basra. Unlike in *Al-Skeini and Others*, the facts of this case had taken place after the end of the occupation regime, when power had already been transferred to the interim government; however, the multinational force, including British forces, were still stationed in Iraq at the Government's request and with the authorisation of the United Nations Security Council. The respondent Government had denied that the detention at issue fell within the United Kingdom's jurisdiction, because the applicant had been interned at a time when the British forces had been operating as part of a

Multinational Force authorised by the Security Council and subject to the ultimate authority of the United Nations; they had submitted that in detaining the applicant, the British troops had not been exercising the sovereign authority of the United Kingdom but the international authority of the Multinational Force, acting pursuant to the binding decision of the United Nations Security Council. The Court rejected that argument. It noted that at the time of the invasion of Iraq, no Security Council resolution had specified how the roles should be distributed in Iraq should the regime be overthrown. In May 2003 the United Kingdom and the United States, having removed the former regime, had taken control of security in Iraq; the UN had been assigned a role in the fields of humanitarian aid, supporting the reconstruction of Iraq and assistance in setting up an Iraqi provisional authority, but not in the security sphere. The Court took the view that the subsequent resolutions had not altered that situation. Since the Security Council had had neither effective control nor ultimate authority and control over the acts and omissions of troops within the Multinational Force, the applicant's detention was not attributable to the United Nations. The internment decision against the applicant had been taken by the British officer in command of the detention facility, and he had been interned in a detention facility in Basra City, controlled exclusively by British forces. Although the decision to keep the applicant in internment had, at various points, been reviewed by committees including Iraqi officials and non-The United Kingdom representatives from the Multinational Force, the existence of these reviews had not operated to prevent the detention from being attributable to the United Kingdom. Mr Al-Jedda had therefore been under the authority and control of the United Kingdom for the duration of his detention. In conclusion, the Court found that the internment of the applicant had been attributable to the United Kingdom and that during his internment the applicant *had fallen within the jurisdiction of the United Kingdom* for the purposes of Article 1 of the Convention (§§ 76-86). The Court had thus concentrated on whether the applicant had been effectively subject to the power of the respondent State rather than assessing the extent and nature of the controlee exercised by the United Kingdom over the territory in question.

84. The same approach had been adopted in the case of *Hassan v. the United Kingdom* [GC], 2014, concerning the capture of the applicant's brother by the British armed forces and his detention in Camp Bucca in south-eastern Iraq during the hostilities in 2003. The applicant submitted that his brother had been under the control of the British forces and that his corpse, when subsequently found, had borne traces suggesting that he had been tortured and executed. As in the *Al-Skeini and Others* judgment, the Court did not deem it necessary to determine whether the United Kingdom had indeed been in control of the area in question during the relevant period because the direct victim had fallen under that country's jurisdiction for another reason. In that connection the Court rejected the Government's argument to the effect that no jurisdiction had applied because as regards the period subsequent to his admission to Camp Bucca, the applicant's brother had been transferred from the authority of the United Kingdom to that of the United States. Having regard to the arrangements operating at Camp Bucca, the Court held that the United Kingdom had retained authority and control over the direct victim. That authority and that control had extended from the admission of the applicant's brother to the Camp through the period following his admission, when he had been taken to the Joint Forward Interrogation Team compound, which was under the exclusive control of the British forces. Following the interrogation the British authorities had placed him on one of the categories set out in international humanitarian law, deciding that he was a "civilian" who did not pose a threat to security, and ordered that he should be released as soon as practicable. Finally, it was clear that when he had been taken to the civilian holding area with a view to his release, the applicant's brother had remained in the custody of armed military personnel and under the authority and control of the United Kingdom until the moment he was let off the bus that took him from the Camp. He *had therefore been within the jurisdiction of the United Kingdom* throughout the period in question (§§ 75-80).

85. In the case of *Jaloud v. the Netherlands* [GC], 2014, the Court broadened the concept of extraterritorial jurisdiction as compared with *Al-Skeini and Others* and *Al-Jedda*, explicitly stating that

the "occupying power" status mentioned in Article 42 of the Hague Convention respecting the Laws and Customs of War on Land was not in itself decisive *vis-à-vis* the question of jurisdiction for the purposes of Article 1 of the Convention (§ 142). Following the Iraq invasion, the Netherlands Government had provided troops which had been based in south-east Iraq between July 2003 and March 2005, as part of a multinational division under the command of an officer of the British armed forces. In the instant case the applicant's son had been fatally wounded by gunfire in April 2004, when he had been attempting to pass a checkpoint which was controlled by the Iraqi Civil Defence Corps (ICDC) but which also involved members of the Netherlands Royal Army operating under the command and direct supervision of a Royal Army officer; the shots had been fired by a Dutch lieutenant. The Court noted that the Netherlands had not forfeited jurisdiction by the mere fact of accepting the operational control of a British officer. As the evidence on file demonstrated, not only had the Netherlands retained full command of their military personnel in Iraq, but also the establishment of separate rules on the use of force in Iraq remained the reserved domain of individual sending States. The Court therefore concluded, in the circumstances of the case, that the Netherlands forces had not been placed at the disposal of any other State, be it Iraq or the United Kingdom, and that the death of the applicant's brother *had occurred under the jurisdiction of the Netherlands* (§ 142).

86. However, the Court reached the *opposite conclusion* in the case of *Issa and Others v. Turkey*, 2004, which concerned Iraqi Kurdish shepherds who had allegedly been arrested by Turkish soldiers during a Turkish military operation in northern Iraq in 1995, and then been taken to a cave and killed. In the Court's view, notwithstanding the large number of soldiers involved in that operation, it did not appear that Turkey had exercised effective overall control of the entire area in question. Moreover, it had not been sufficiently established by the evidence on file that the Turkish armed forces had been conducting operations in the geographical area in question when the victims had been present there. Consequently, the direct victims *could not be considered to have been within the jurisdiction of the Turkish State* (§§ 71-82).

87. In an inter-State case against Russia, the Ukrainian Government had raised a series of complaints concerning events which had occurred between 27 February 2014 and 26 August 2015, in the course of which the Crimean region (including the city of Sebastopol) had been incorporated into the Russian Federation. The Court examined the question of the respondent State's "jurisdiction", dealing separately with two different periods: the period preceding 18 March 2014, when the Russian Federation, the "Crimean Republic" and the City of Sebastopol had signed a "unification treaty" incorporating Crimea into Russia, and the period since that date. As regards the former period, the Court followed its usual approach as defined in *Al-Skeini and Others v. the United Kingdom* [GC], 2011 (§§ 133-140), exceptionally recognising the extraterritorial exercise of jurisdiction based on the "effective control" by Russia of the area in question. The Court based it finding on a detailed appraisal of the evidence relating to the circumstances of the case, assessing both the power and the actual conduct of the Russian military forces in Crimea. Regarding the former aspect Sur le premier point (military power), the Court considered that the question whether the reinforcement of the Russian military presence in Crimea at the time had been in compliance with the bilateral agreements in force between the two States could not be decisive: it attached greater importance to the relative size and strength of the respondent State's armed forces in the area in question than to their combat potential, also focusing on the reasons given for increasing the military presence. In connection with the second aspect (the army's actual behaviour), the Court had regard to the level of the Russian soldiers' active involvement in the impugned events in Crimea, as well as the public statements made by various high officials in the respondent State. Having regard to all the available evidence, the Court concluded that Russia had exercised effective control over Crimea during the period in question. That being the case, it was unnecessary to determine whether the respondent State had exercised specific control over the policies and actions of the local authorities. The fact that Ukraine had not availed itself of the right of derogation from its Convention obligations in respect of Crimea regarding the period in question is irrelevant for the above findings

concerning the respondent State's jurisdiction under Article 1 of the Convention. In short, the alleged victims of the administrative practice complained of by the Ukrainian Government *had fallen under the "jurisdiction" of the Russian State during the period in question*, without any need to ascertain whether such jurisdiction had also been based on the principle of "State agent authority" (*Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, §§ 308-352).

ii. Creation of an entity unrecognised by the international community

88. The Court has considered this type of situation in four different historical-political contexts: Turkey's responsibility for breaches of the Convention in *Northern Cyprus*, Russia's responsibility for violations committed in *Transdniestria* and in *South Ossetia and Abkhazia*, respectively and Armenia's responsibility for violations in *Nagorno-Karabakh*.

89. The acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention. That is particularly true in the case of recognition by the State in question of the acts of self-proclaimed authorities which are not recognised by the international community (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 318).

90. The *first* series of cases concerns the situation which has prevailed in Northern Cyprus since *Turkey* conducted military operations there in July and August 1974, and the continuing division of the territory of Cyprus. Before the organs of the Convention Cyprus affirmed that Turkey was responsible under the Convention for the alleged violations despite the proclamation of the "Turkish Republic of Northern Cyprus" ("TRNC") in November 1983, followed by the adoption of the "Constitution of the TRNC" in May 1985. Cyprus submitted that the "TRNC" was an illegal entity under international law, stressing that the international community had condemned its creation. Turkey, for its part, stated that the "TRNC" was a constitutional and democratic State politically independent from any other sovereign State, including Turkey. For that reason Turkey emphasised that the alleged violations were exclusively imputable to the "TRNC" and that it could not be held responsible under the Convention for the acts or omissions which had led to the complaints (*Cyprus v. Turkey* [GC], 2001, §§ 13-16).

91. The Commission and the Court reaffirmed that having regard to international practice and the condemnations set out in the Resolutions of the UN Security Council and of the Committee of Ministers of the Council of Europe, it was clear that the international community did not recognise the "TRNC" as a State under international law. Only the Republic of Cyprus, a High Contracting Party to the Convention, constituted the legitimate government of Cyprus (*Cyprus v. Turkey*, Commission decision of 26 May 1975; *Loizidou v. Turkey* (preliminary objections), 1995, § 40; *Loizidou v. Turkey* (merits), 1996, § 44; *Cyprus v. Turkey* [GC], 2001, § 61 ; *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 2019, § 193).

92. The Court acknowledged that the alleged violations in the North of Cyprus *fell within Turkey's jurisdiction* in the following cases:

- In two initial inter-State cases examined in its decision of *Cyprus v. Turkey*, the Commission held that the Turkish armed forces in Cyprus were representatives of Turkey, which meant that all the military property and personnel present in Cyprus fell within the jurisdiction of that State, insofar as that military personnel exercised their authority over such persons and property.
- In the case of *Loizidou v. Turkey* (preliminary objections), 1995, where the applicant, a Greek Cypriot, complained that she had been deprived of access to her property in northern Cyprus, the Court noted, at the preliminary objections stage, that the applicant's loss of control of her property stemmed from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the "TRNC", and that the applicant had been prevented by Turkish troops from gaining access to her property. The impugned

acts were therefore capable of falling within Turkish "jurisdiction" within the meaning of Article 1 of the Convention (*ibid.*, §§ 63-64). In the judgment on the merits of the same case, the Court, considering the “imputability” of the alleged violations to Turkey, held that it was unnecessary to determine whether that country actually exercised detailed control over the policies and actions of the authorities of the "TRNC", because it was obvious from the large number of troops engaged in active duties in the disputed area that the Turkish army exercised effective overall control over that part of the island; such control incurred Turkish responsibility for the policies and actions of the "TRNC". Persons affected by those policies and actions therefore fell within the “jurisdiction” of Turkey, and the alleged violations were consequently “imputable” to that State (*Loizidou v. Turkey* (merits), 1996, §§ 52-57).

- In the inter-State case of *Cyprus v. Turkey* [GC], 2001, the Court reiterated its general finding in *Loizidou* that Turkey in practice exercised overall control in northern Cyprus via its military presence on the ground; consequently, its responsibility under the Convention was incurred for the policies and actions of the “TRNC” authorities. The Court emphasised that Turkey’s responsibility under the Convention could not be confined to the acts of its own soldiers or officials in northern Cyprus but had also to be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. Turkey’s “jurisdiction” should be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which Turkey has ratified, and violations of those rights were imputable to it (§§ 76-77).
- In the case of *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 2019, concerning the murders of several former residents of the “Turkish Republic of Northern Cyprus” (“TRNC”) in the territory of the Republic of Cyprus and the investigations conducted into those facts by the “TRNC” authorities, the Court pointed out that the international community regarded Turkey as being in occupation of the northern part of Cyprus, and did not recognise the “TRNC” as a State under international law. Northern Cyprus was under the effective control of Turkey for the purposes of the Convention. Secondly, the murder suspects had fled to the “TRNC” and as a consequence, the Republic of Cyprus had been prevented from pursuing its own criminal investigation in respect of those suspects and thus from fulfilling its Convention obligations (§ 193).

93. The *second* series of cases concerns the responsibility of *Russia* for acts committed in the “Moldovan Republic of Transdniestria”, an entity set up in Moldavan territory. In the case of *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, the applicants, who had been sentenced variously to death and heavy prison sentences by the “supreme court” of that entity, complained of a series of violations of their fundamental rights which they alleged were imputable to Russia. The Court noted that in 1991-1992, forces of the former 14th Army (which had belonged successively to the USSR and Russia), stationed in Transdniestria, had fought with and for the Transdniestrian separatist forces. Large quantities of weapons from the 14th Army’s arsenal had been transferred voluntarily to the separatists, who had, moreover, been able to secure further arms, unopposed by the Russian military. Furthermore, throughout the confrontations between the Moldovan authorities and the Transdniestrian separatists, the Russian leaders had issue political statements in support of the separatist authorities. Even after the ceasefire agreement, Russia had continued to provide military, political and economic support to the separatist regime, thus enabling it to survive by strengthening itself and by acquiring a certain amount of autonomy *vis-à-vis* Moldova. In the Court’s view, all the acts committed against the applicants by the Russian military authorities, including their handover to the separatist regime, in the context of collaboration between the Russian authorities and that unlawful regime, which was not recognised by the international community, had been such as to create responsibility for the consequences of the acts of that regime. The whole case-file proved that the Transdniestrian region remained under Russia’s effective authority, or at least under its decisive influence, and at any event that it survived thanks to the military, economic, financial and political

support provided by Russia both before and after its ratification of the Convention. In those circumstances, the applicants were within the "jurisdiction" of Russia, whose responsibility was incurred in relation to the impugned acts (§§ 377-394).

94. This conclusion as regards *Russia's responsibility vis-à-vis* Transdniestria was reiterated in the following cases:

- In the case of *Ivanţoc and Others v. Moldova and Russia*, 2011, concerning the continued detention of two of the four applicants in *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, after and despite the delivery of the Grand Chamber judgment in this case. The Court sought to establish whether Russia's policy of supporting the Transdniestrian separatist regime had changed between 2004 and 2007, the date of the applicants' release. It noted that Russia continued to enjoy a close relationship with the "Moldovan Republic of Transdniestria", amounting to providing political, financial and economic support to the separatist regime. Moreover, the Court found that the Russian army (troops, equipment and ammunition) had, at the date of the applicants' release, still been stationed on Moldovan territory in breach of the Russian Federation's undertakings to withdraw completely and in breach of Moldovan legislation. The applicants had therefore fallen within Russia's "jurisdiction" for the purposes of Article 1 of the Convention (*Ivanţoc and Others v. Moldova and Russia*, 2011, §§ 116-120).
- In the case of *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, concerning a complaint lodged by children and parents belonging to the Moldovan community in Transdniestria regarding the effects of a language policy adopted in 1992 and 1994 by the separatist regime prohibiting the use of the Latin alphabet in schools, as well as the subsequent measures to implement that policy. Having reiterated its finding already set out in the *Ilaşcu and Others v. Moldova and Russia* [GC] (2004) and *Ivanţoc and Others v. Moldova and Russia* (2011) judgments, the Court noted that Russia was continuing to provide military, economic and political support to the Transdniestrian separatists (gas supplies, payment des pensions, etc.). The impugned facts therefore fell within the jurisdiction of Russia, even if no Russian agents had been directly involved in the measures adopted against the applicants' schools (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, §§ 116-123).
- In the case of *Mozer v. the Republic of Moldova and Russia* [GC], 2016, concerning the detention of a man suspected of fraud, as ordered by the courts of the "Moldovan Republic of Transdniestria" ("MRT"). Given the absence of any relevant new information to the contrary, the Court considered that its conclusion concerning Russia's jurisdiction expressed in all the above-mentioned judgments continued to be valid for the period under consideration in that case (§§ 109-111); see the same reasoning in respect of a subsequent period in *Apcov v. the Republic of Moldova and Russia*, 2017, § 24).

95. The *third* case examined by the Court was that of the two separatist entities established in Georgia, that is to say South Ossetia and Abkhazia, especially during and after the armed conflict between Georgia and Russia in August 2008, the climax of a long series of tensions, provocations and incidents between the two countries. In its observations, the Russian Government had acknowledged a substantial Russian military presence after the cessation of hostilities and provided numerous indications showing the extent of the economic and financial support that the Russian Federation had provided and continued to provide to South Ossetia and to Abkhazia. the EU's Fact-Finding Mission also emphasised the relationship of dependency not only in economic and financial, but also in military and political terms; the information provided was also revealing as to the pre-existing relationship of subordination between the separatist entities and the Russian Federation, which had lasted throughout the active phase of the hostilities and after the cessation of hostilities. In its report, the EU's Fact-Finding Mission had spoken of "creeping annexation" of South Ossetia and Abkhazia by Russia. The Court considered that the Russian Federation had exercised effective

control over South Ossetia and Abkhazia (as well as a "buffer zone" located in undisputed Georgian territory) during the period from the date of cessation of active hostilities and the date of the official withdrawal of Russian troops. Even after that period, the strong Russian presence and the South Ossetian and Abkhazian authorities' dependency on the Russian Federation, on whom their survival depended, as was shown particularly by the cooperation and assistance agreements signed with the latter, indicated that there had been continued "effective control" over the two territories. The events which had occurred after the ceasefire had therefore fallen within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention (*Georgia v. Russia (II)* (merits), 2021, §§ 161-175).

96. With specific regard to the alleged ill-treatment of prisoners of war, even if the direct participation of the Russian forces had not been clearly demonstrated in all cases, the Russian Federation had also been responsible for the actions of the South Ossetian forces, without it being necessary to provide proof of "detailed control" of each of those actions (*ibid.*, § 276). As regards the large number of Georgian nationals who had fled the conflict and been unable to return to South Ossetia, they had also come under Russia's jurisdiction. Indeed, the fact that their respective homes, to which they were prevented from returning, were situated in areas under the "effective control" of the Russian Federation, and the fact that the Russian Federation exercised "effective control" over the administrative borders, are sufficient to establish a jurisdictional link for the purposes of Article 1 (*ibid.*, §§ 293-295).

97. Finally, the *fourth* situation examined by the Court concerned the responsibility of *Armenia* for acts committed in the "Republic of Nagorno-Karabakh" established in an area of Azerbaijan. At the time of the dissolution of the Soviet Union in December 1991, the Nagorno-Karabakh Autonomous Oblast (the "NKAO") had been an autonomous province situated within the Azerbaijan Soviet Socialist Republic ("the Azerbaijan SSR"). There had been no common border between the NKAO and the Armenian Soviet Socialist Republic ("the Armenian SSR"), which had been separated by Azerbaijani territory. In 1988 armed hostilities broke out in this region. In September 1991 – shortly after Azerbaijan had proclaimed its independence from the Soviet Union – the NKAO *soviet* announced the foundation of the "Nagorno-Karabakh Republic" ("the NKR"), comprising the NKAO and the Shahumyan district of Azerbaijan. Following a referendum held in December 1991 (and boycotted by the Azeri population) in which 99.9 % of voters had come down in favour of the secession of the "NKR", the latter reaffirmed its independence from Azerbaijan in January 1992. After that the conflict gradually escalated into full-scale war. By the end of 1993 the ethnic Armenian troops had gained control over almost the entire territory of the former NKAO and seven adjacent Azerbaijani regions. In May 1994 the belligerents signed a ceasefire agreement, which is still in force. The self-proclaimed independence of the "NKR" has not been recognised by any State or international organisation (*Chiragov and Others v. Armenia* [GC], 2015, §§ 12-31; *Sargsyan v. Azerbaijan* [GC], 2015, §§ 14-28).

98. In the case of *Chiragov and Others v. Armenia* [GC], 2015, the applicants, Azerbaijani Kurds from the Lachin district (which is part of Azerbaijan, separating Nagorno-Karabakh from Armenia), complained of their inability to accede to their homes and property since having been forced to leave the district by the armed conflict between the two countries. Under Article 1 of the Convention, the Court had regard to a whole series of reports and public statements – particularly from present and former members of the Armenian Government – and concluded that Armenia, through its military presence and its provision of military material and advice, had been involved in the Nagorno-Karabakh conflict from the very early stages. In the Court's view, that military support was decisive for the control over the territories in issue, and moreover, it was obvious from the facts of the case that Armenia provided substantial political and financial support to the "NKR" ("Nagorno-Karabakh Republic"). Furthermore, the residents of the "NKR" were required to obtain Armenian passports to travel abroad. The Court found that Armenia and the "NKR" had been highly integrated in virtually all important matters, and that the NKR and its administration survived thanks to the

military, political, financial and other supported provided by Armenia, which, accordingly, exercised effective control over Nagorno-Karabakh and the adjacent territories. The alleged facts *had therefore occurred within the jurisdiction of Armenia* (§§ 169-186).

99. The Court reached the same conclusion concerning Armenian jurisdiction in the following cases:

- a community of Jehovah's Witnesses to whom the "NKR" had denied registration as a religious organisation (*Christian Religious Organization of Jehovah's Witnesses in the NKR v. Armenia*, 2022, §§ 47-49);
- an Armenian national convicted by the "NKR" courts for refusing to perform compulsory military service in that entity (*Avanesyan v. Armenia*, 2021, §§ 36-37);
- Armenian nationals who were ill-treated or killed during compulsory military service in the "NKR" (*Zalyan and Others v. Armenia*, 2016, §§ 213-215; *Muradyan v. Armenia*, 2016, §§ 123-127; *Mirzoyan v. Armenia*, 2019, § 56; *Nana Muradyan v. Armenia*, 2022, §§ 88-92). In *Mirzoyan v. Armenia*, 2019, the Court applied both jurisdictional criteria – territorial and personal –, as the direct victim had been killed in Armenian-controlled territory by an Armenian officer (*ibid*., § 56), whereas in those other cases, the territorial criterion alone had been sufficient (see the comparison between the two cases in *Nana Muradyan v. Armenia*, 2022, §§ 91-92).

b. Jurisdiction of a State undergoing foreign military action (or military action unrecognised by the international community) within its territory

100. The responsibility of a "passive" Contracting State, that is to say a State which is undergoing military action launched by another State (whether or not a Party to the Convention) or by a local regime unrecognised by the international community, follows a different logic from that of an "active" State. The Court does not seek to establish whether or not that State holds "jurisdiction", because it is deemed to exercise the latter normally throughout its territory; the Court therefore always starts from the presumption that the facts of the case fall within the jurisdiction of the "passive" State. On the other hand, in exceptional circumstances, where the State is unable to exercise its authority in a part of its territory, that presumption may be *limited*. In other words, there is a presumption of jurisdiction (or competence), and the Court must determine whether there are any valid reasons to rebut that presumption (*Assanidze v. Georgia* [GC], 2004, § 139).

101. The respondent State's jurisdiction may be limited because of a military occupation by the armed forces of another State effectively controlling the territory in question, because of acts of war or rebellion, or because of the actions of a foreign State supporting the installation of an unrecognised regime in the territory of the State concerned. In order to be able to conclude that such an exceptional situation exists, the Court must examine, on the one hand, all the objective facts capable of limiting the effective exercise of a State's authority over its territory, and on the other, the State's own conduct. The undertakings given by a Contracting State under Article 1 of the Convention include, in addition to the duty to refrain from interfering with the enjoyment of the rights and freedoms guaranteed, positive obligations to take appropriate steps to ensure respect for those rights and freedoms within its territory. Those obligations remain even where the exercise of the State's authority is limited in part of its territory, so that it has a duty to take all the appropriate measures which it is still within its power to take (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 312-313; *Sargsyan v. Azerbaijan* [GC], 2015, §§ 127-129). The respondent State's obligation under Article 1 of the Convention, to "secure to everyone within their jurisdiction the [Convention] rights and freedoms", was, however, limited in the circumstances to a positive obligation to take the diplomatic, economic, judicial or other measures that were both in its power to take and in accordance with international law (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 109; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 331).

102. Drawing on the above principles, the Court recognised Moldova's "jurisdiction" over the violations committed in Transdniestria, despite the fact that the Moldovan State had been prevented from exercising effective control over the relevant part of its territory (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 322-331; *Ivanţoc and Others v. Moldova and Russia*, 2011, §§ 105-106; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, §§ 109-110; *Mozer v. the Republic of Moldova and Russia* [GC], 2016, § 99-100).

The fact that under public international law the region is recognised as part of the territory of Moldova bestows on the latter a positive obligation, based on Article 1 of the Convention, to use all the legal and diplomatic means at its disposal to continue to ensure that the persons living in the region can benefit from the rights and freedoms set forth in the (see, for a reminder of the principles, *Pocasovschi and Mihaila v. the Republic of Moldova and Russia*, 2018, §§ 43-44).

It is noted that this case concerned a specific situation. Prisoners being held in unacceptable conditions in a Moldavan prison complained that water and electricity supplies had been cut off by the separatist entity. Even if the municipal authority which had ordered the cutting off of the water, heating and electricity supplies had operated under the control of that entity, unlike in the other cases, the Moldavan authorities had exercised effective control over the prison in which the alleged violations had occurred, as well as over its inmates. The latter authorities could therefore have intervened directly (§ 46).

103. In the case of *Sargsyan v. Azerbaijan* [GC], 2015, an Armenian refugee who had had to flee his home in the Shahumyan region of Azerbaijan in 1992, during the conflict between Armenia and Azerbaijan over Nagorno-Karabakh (see above), complained that he had been unable to return to his village in order to access and use his property there. This was the first case in which the Court was called upon to determine a complaint against a State which had lost control of part of its territory as a result of a war and occupation, but which was alleged to have been responsible for refusing to allow a displaced person to accede to his property situated in a region which was still under its control. The Court first of all noted that the village in question was located in the internationally recognised territory of Azerbaijan and that, accordingly, the presumption of Azerbaijan's jurisdiction applied. It was therefore incumbent on the Azerbaijani Government to demonstrate the existence of exceptional circumstances liable to limit its responsibility under Article 1 of the Convention. Having regard to the facts before it, the Court noted that it was impossible to determine with any certainty whether the Azerbaijani military forces had been present in the village during its period of temporary jurisdiction (that is to say since the ratification of the Convention by Azerbaijan). Moreover, it observed that no party had alleged that the "Republic of Nagorno-Karabakh" had had any troops in the village. The Court was not convinced by the Government's argument to the effect that because the village had been located in a disputed are and was surrounded by mines and military positions, Azerbaijan's responsibility under the Convention had been limited. Indeed, unlike in other similar cases concerning Transdniestria or Northern Cyprus, the territory in question had not been occupied by the armed forces of a third State. The facts of the case *had therefore fallen within the jurisdiction of Azerbaijan* (§§ 132-151).

104. The case of *Assanidze v. Georgia* [GC], 2004, concerned an unusual situation. The applicant complained that he had been retained in the custody of the authorities of the Ajarian Autonomous Republic, an autonomous territorial unit of Georgia, despite having received a presidential pardon for a first offence and been acquitted of a second by the Supreme Court of Georgia. The Court noted that Georgia had ratified the Convention for the whole of its territory, and that no other State exercised effective overall control in Ajaria. On ratifying the Convention, Georgia did not make any specific reservation under Article 57 of the Convention with regard to Ajaria or to difficulties in exercising its jurisdiction over that territory. Such a reservation would in any event have been ineffective, as the case-law precludes territorial exclusions other than in the instance referred to in Article 56 § 1 of the Convention (dependent territories). Therefore, the impugned facts had fallen within the "jurisdiction" of Georgia for the purposes of Article 1 of the Convention (§§ 139-143). The

Court then considered the "imputability" to the Georgian State of the alleged violations. It noted that the central authorities had taken all the procedural steps possible under domestic law to secure compliance with the judgment acquitting the applicant, sought to resolve the dispute by various political means, and repeatedly urged the Ajarian authorities to release him, all in vain. Consequently, the facts complained of by the applicant had been directly imputable to the local Ajarian authorities. However, even though it is not inconceivable that States will encounter difficulties in securing compliance with the rights guaranteed by the Convention in all parts of their territory, each State Party to the Convention nonetheless remains responsible for events occurring anywhere within its national territory. The Court therefore found that *the responsibility of the Georgian State had been incurred* under the Convention (§§ 144-150).

105. When a Contracting State is prevented from exercising authority over its whole territory due to an exceptional factual situation, it does not cease to have jurisdiction within the meaning of Article 1 of the Convention over the part of its territory which is temporarily beyond its control (*Sargsyan v. Azerbaijan* [GC], 2015, § 130). Such a factual situation nonetheless has the effect of reducing the scope of that jurisdiction, in that the commitment entered into by the Contracting State under Article 1 must be examined by the Court solely in the light of the State's positive obligations in respect of persons present in its territory. The State in question must endeavour, with all the legal and diplomatic means available to it *vis-à-vis* foreign States and international organisations, to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention. Although it is not for the Court to indicate which measures the authorities should take in order to comply with their obligations most effectively, it must verify that the measures actually taken were appropriate and sufficient in the present case. When faced with a partial or total failure to act, the Court's task is to determine to what extent a minimum effort was nevertheless possible and whether it should have been made. Determining that question is especially necessary in cases concerning an alleged infringement of absolute rights such as those guaranteed by Articles 2 and 3 of the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 333-334).

106. Generally speaking, the following *six positive obligations* incumbent on the "passive" State can be identified in the Court's existing case-law:

a. Three general obligations
    i. to affirm and reaffirm its sovereignty over the territory in issue (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 339-341 and 343; *Ivanţoc and Others v. Moldova and Russia*, 2011, § 108);
    ii. to refrain from providing any kind of support to the regime unrecognised by the international community (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 345);
    iii. to actively attempt to re-establish control over the disputed territory (*ibid*., § 341-344; *Ivanţoc and Others v. Moldova and Russia*, 2011, § 108);
b. Three special obligations relating to individual applicants
    i. to attempt to resolve the applicants' situation by political and diplomatic means (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 346-347; *Ivanţoc and Others v. Moldova and Russia*, 2011, § 109);
    ii. to attempt to resolve the applicants' situation by appropriate practical and technical means (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 147);
    iii. to take the appropriate judicial action to protect the applicants' rights (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 346-347; *Ivanţoc and Others v. Moldova and Russia*, 2011, § 110).

107. Furthermore, the Court has held that the efforts expended by the "passive" State in question to honour the six above-mentioned obligations should be constant and relevant (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 348-352; *Ivanţoc and Others v. Moldova and Russia*, 2011, § 111; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 148). However, the question whether the State in question has fulfilled its positive obligations as defined by the Court's case-law must be decided in the light of the individual case rather than with reference to Article 1 of the Convention.

II. Delegation of State powers or joint exercise of the latter with other States

108. The fact that a Contracting State executes a decision or an order given by an authority of a foreign State is not in itself sufficient to relieve a Contracting State of the obligations which it has taken upon itself under the Convention (*Jaloud v. the Netherlands* [GC], 2014, § 143).

109. The mere fact that a State exercises the right to vote in an inter-State entity is not sufficient for the persons affected by the decisions of that entity to be deemed to fall within the jurisdiction of that State for the purposes of Article 1 of the Convention. The first case in which the Commission had to consider this kind of situation was that of *Hess v. the United Kingdom*, Commission decision of 28 May 1975. Rudolf Hess, the former head of the chancellery of the German National-Socialist Party, who had been sentenced to life imprisonment by the Nuremberg International Military Tribunal, was incarcerated in the Allied Military Prison in Berlin-Spandau. That prison was jointly administered by the four occupying powers (the United Kingdom, the United States, France and the Soviet Union), and all decisions concerning the administration of the prison could only be taken in agreement with the representatives of all four States. The United Kingdom had therefore been acting as a partner, sharing authority and responsibility with the other three powers. The Commission ruled that that shared authority could not be divided up into four separate jurisdictions and that, therefore, the United Kingdom's participation in the administration of the prison had not fallen under that State's jurisdiction. The application was therefore declared incompatible *ratione personae* with the Convention.

A. Imputability to the European Union of an alleged violation: the *Bosphorus* presumption or the principle of equivalent protection

110. In *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, concerning the implementation in the respondent State of an EU Regulation adopted on the basis of a UNSC Resolution, the Court created a nuanced case-law mechanism which may be summarised as follows:

- States are responsible under the Convention for measures which they adopt pursuant to international legal obligations, including where such obligations stem from their membership of an international organisation to which they have transferred part of their sovereignty.
- However, a measure adopted pursuant to such obligations must be deemed justified provided that the organisation in question affords fundamental rights protection at least equivalent – that is to say comparable – to that provided by the Convention.
- Nevertheless, such justification lapses in two situations:
  - where the impugned acts do not fall strictly within the ambit of the respondent State's international legal obligations, in particular where that State has exercised discretionary powers;

or else

- where the protection of the rights in issue, guaranteed by the Convention, is manifestly deficient.

111. In the case of *M.S.S. v. Belgium and Greece* [GC], 2011, the Belgian Government invoked the Bosphorus presumption on the grounds that by sending the applicant back to Greece they were merely complying with the "Dublin II" Regulation, to which the Court replied that under the so-called "sovereignty clause" set out in Article 3 § 2 of the Regulation, that Government had had the discretionary power not to expel the applicant and thus to comply with the Convention. Consequently, the presumption had not been applied (§§ 339-340).

B. Imputability to the UN of alleged violations

112. As regards the UN, there are two different hypotheses:

1. international military operations, and
2. international sanctions imposed by the UN Security Council (UNSC).

1. International military operations

113. As regards alleged violations of human rights in the framework of international military operations, the Court has concentrated on identifying the entity responsible for the military operation or action in question, that is to say the entity which held ultimate authority and control. In the case of *Behrami and Behrami v. France and Saramati v. France, Germany and Norway* (dec.) [GC], 2007, the applicants had been victims of airstrikes and deprivation of liberty, respectively, in the framework of NATO military operations in Yugoslav territory in 1999. A UNSC Resolution had provided for the provision of a security presence (KFOR) by "Member States and relevant international institutions", "under UN auspices", with "substantial NATO participation" but "under unified command and control". That Resolution had also provided for the deployment, under UN auspices, of an interim administration for Kosovo (MINUK).

114. In its decision, the Court considered whether the material facts had been attributable to the UN. It noted the delegation by the UNSC of its powers under Section VII of the UN Charter, and concluded that the decisive question was whether the UNSC had retained "ultimate authority and control" over the armed forces. Applying that criterion, the Court ruled that the UNSC had indeed retained "ultimate authority and control". Having established that the acts and omissions of the MINUK and KFOR had been attributable to the UN, the Court declared the applications incompatible *ratione personae* with the Convention.

115. The case of *Al-Skeini and Others v. the United Kingdom* [GC], 2011, concerned the deaths of six Iraqis who had been killed or fatally wounded by British troops during the invasion of Iraq, where the United Kingdom had held occupying power status. The Court conducted a traditional analysis under Article 1 of the Convention in order to determine whether the victims had been within the "jurisdiction" of the United Kingdom. It noted that at the material time the United Kingdom (together with the United States of America) had assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In such exceptional circumstances, there had been a "jurisdictional link" between the United Kingdom and the persons killed. As regards the UNSC, it had merely acknowledged the role and status of the occupying powers in Iraq.

116. In the *Al-Jedda v. the United Kingdom* [GC] (2011) judgment delivered on the same day as *Al-Skeini and Others*, the Court adjudicated on an application lodged by an Iraqi civilian who had been interned for over three years in a detention centre run by the British forces in Iraq. The defendant Government submitted that that internment had been imputable to the UN rather than to the United Kingdom. The Court rejected that plea. It noted that there had been no UNSC resolution

stipulating the distribution of powers in Iraq under the occupation regime. The only role assigned to the UN had been in the areas of humanitarian aid, support for reconstruction, etc., but not in the security field. However, since the UNSC had not exercised effective control or ultimate authority and control over the acts and omissions of the troops of the multinational force, the applicant's internment was not deemed imputable to the UN.

117. The United Kingdom's second argument in this case was that UNSC Resolution 1546 had required it to resort to internment in Iraq and that, pursuant to Article 103 of the UN Charter, the obligations laid down in that Resolution had taken precedence over those stemming from the Convention. Nevertheless, the Court noted that the UN had not been set up for the sole purpose of ensuring peace and security at the international level, but also in order to "*achieve international cooperation in ... promoting and encouraging respect for human rights and for fundamental freedoms.*" Article 24 § 2 of the Charter required the UNSC to act "in accordance with the Purposes and Principles of the Untitled Nations". The Court concluded that in in interpreting UNSC resolutions, there must be a presumption that the Security Council does not intend to impose any obligation on member States to breach fundamental principles of human rights. In the event of any ambiguity in the terms of a United Nations Security Council resolution, the Court must therefore choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations.

118. Moreover, the Court has recently confirmed the *Al-Jedda* principles in its *Hassan v. the United Kingdom* [GC] (2014) judgment concerning the capture of an Iraqi national by the British armed forces and his detention in a camp during the hostilities in 2003. This was the first case in which a respondent State had relied on international law to request the Court to find inapplicable its obligations under Article 5 of the Convention or, failing that, to interpret them in the light of the powers of detention conferred on it by international humanitarian law. The Court unanimously found that the victim had been within the United Kingdom's jurisdiction rather than that of the United States, as contended by the British Government. The Court rejected the latter's submissions denying the application of any jurisdiction during the active hostilities phase of an international armed conflict, when the agents of the Contracting State are acting within a territory of which the latter is not the occupying power and the conduct of the Contracting State is instead governed by the provisions of international humanitarian law. The Court considered that such a conclusion would be contrary to its previous case-law. It also held that even after the area in question had been transferred from British to US authority, the United Kingdom had retained authority and control over all the aspects of the complaints raised by the applicant.

2. International sanctions ordered by the UN Security Council

119. The issue of sanctions ordered by the UNSC was dealt with in the case of *Nada v. Switzerland* [GC], 2012, which concerned a ban on the applicant transiting through Swiss territory, which was the only way out of the small Italian enclave where he lived. That restriction had been imposed by the Swiss authorities in pursuance of a number of UNSC resolutions relating to the fight against terrorism (particularly the Taliban and al-Qaeda). The Court first of all acknowledged the admissibility of the application *ratione personae*: even though the case concerned the application of a UNSC resolution, the impugned decisions had not been taken by the Swiss authorities. On the merits of the case, the Court observed that the terms of the resolution had been clear and explicit, imposing on Switzerland an obligation to take measures capable of breaching human rights. The Court deduced that there had been a rebuttal of the presumption that a UNSC resolution could not be interpreted as imposing on member States an obligation contravening the fundamental principles relating to human rights protection. Furthermore, the Court did not contest the binding force of the UNSC resolution, although it did note that Switzerland had some limited, but nonetheless real, discretion in the application of such resolutions (see, in particular, § 179). Under those circumstances, the State could no longer hide behind the binding nature of the resolutions; on the

contrary, it should have persuaded the Court that it had taken – or at least had attempted to take – "all possible measures to adapt the sanctions regime to the applicant's individual situation" (§ 96).

120. The Court reached a similar conclusion in *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016. The applicant was an Iraqi national who had been responsible for the finances of the Iraqi secret services under Saddam Hussein's regime and for a company which he had owned. The applicants having been included on the lists of sanctions appended to UNSC Resolution 1483 (2003) concerning Iraq, their assets in Switzerland had been frozen and made subject to a confiscation procedure. The Swiss Federal Court had merely checked whether the applicants' names duly appeared on the lists drawn up by the Sanctions Committee and whether the assets in questions belonged to them. That court had, on the other hand, refused to consider their allegations regarding the compatibility of the procedure used to confiscate their assets with the fundamental safeguards on a fair trial set out in the Convention. The Federal Court had invoked the absolute precedence of the obligations stemming from the UN Charter and the decisions taken by the UNSC under that Charter over any other standard of international law, and the very precise and detailed nature of the obligations imposed on States by the Resolution, which left them no margin of discretion. The Court considered that such resolutions should always be interpreted on the basis of the (rebuttable) presumption that the UNSC does not intentionally impose on States an obligation contravening the fundamental principles of human rights. Therefore, when a resolution contains no clear and explicit exclusion or limitation of respect for human rights in the framework of the implementation of sanctions, it must always be understood as authorising the courts of the respondent State to exercise sufficient scrutiny to avoid any arbitrariness. Consequently, to that extent, Switzerland had been responsible for a possible violation of the right to a fair trial.

C. Imputability of the alleged violation to other international organisations

121. As regards other international organisations, the Court has always adopted a differential approach, drawing a distinction between two types of case.

122. Where the applicant complains about a *structural deficiency* in the internal workings of the international organisation in question, the Court applies the *Bosphorus* presumption, which involves verifying whether the States, when transferring some of their sovereign powers to the relevant international organisation, ensured that the rights secured under the Convention were afforded protection equivalent to that of the Convention (*Gasparini v. Italy and Belgium* (dec.), 2009; *Rambus Inc. v. Germany* (dec.), 2009; *Klausecker v. Germany* (dec.), 2015).

123. On the other hand, where the applicant complains not about of a structural deficiency in the internal machinery of the international organisation in question but about a *specific decision* taken within that organisation, the application is incompatible *ratione personae* with the provisions of the Convention (*Boivin v. 34 member States of the Council of Europe* (dec.), 2008; *Connolly v. 15 member States of the European Union* (dec.), 2008 ; *Beygo v. 46 member States of the Council of Europe* (dec.), 2009; *López Cifuentes v. Spain* (dec.), 2009). The mere fact that the respondent State, in accordance with the relevant procedural rules of the organisation in question, avails itself of submitting observations in the case which led to the impugned decision cannot as such engage that State's liability under the Convention (*Konkurrenten.no AS v. Norway* (dec.), 2019, § 41).

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The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that were not final within the meaning of Article 44 of the Convention when this update was published are marked with an asterisk (*) in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, it is the subsequent Grand Chamber judgment, not the Chamber judgment, that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (*http://hudoc.echr.coe.int*) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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